June 4–9, 2006, meeting in Orlando, Florida by NFPA members.

2005 NOVEMBER MEETING—REPORT ON PROPOSALS

[P = Partial revision; W = Withdrawal; R = Reconfirmation; N = New; C = Complete revision]

NFPA 10	Standard for Portable Fire Extinguishers	C
NFPA 14	Standard for the Installation of Standpipe and Hose Systems	C
NFPA 31	Standard for the Installation of Oil-Burning Equipment	P
NFPA 37	Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines	P
NFPA 51A	Standard for Acetylene Cylinder Charging Plants	C
NFPA 70B	Recommended Practice for Electrical Equipment Maintenance	P
NFPA 79	Electrical Standard for Industrial Machinery	P
NFPA 97	Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances	W
NFPA 102	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures	C
NFPA 211	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances	P
NFPA 289	Standard Method of Fire Test for Room Fire Growth Contribution of Individual Fuel Packages	N
NFPA 418	Standard for Heliports	C
NFPA 750	Standard on Water Mist Fire Protection Systems	P
NFPA 804	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants	C
NFPA 805	Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants	C
NFPA 901	Standard Classifications for Incident Reporting and Fire Protection Data	C
NFPA 914	Code for Fire Protection of Historic Structures	C
NFPA 1401	Recommended Practice for Fire Service Training Reports and Records	C
NFPA 1404	Standard for Fire Service Respiratory Protection Training	C
NFPA 1405	Guide for Land-Based Fire Fighters Who Respond to Marine Vessel Fires	C
NFPA 1851	Standard on Selection, Care, and Maintenance of Structural Fire Fighting Protective Ensembles	C
NFPA 1906	Standard for Wildland Fire Apparatus	C
NFPA 1912	Standard for Fire Apparatus Refurbishing	C
NFPA 1971	Standard on Protective Ensemble For Structural Fire Fighting	C
NFPA 1976	Standard on Protective Ensemble for Proximity Fire Fighting	W
NFPA 1983	Standard on Fire Service Life Safety Rope and System Components	C
NFPA 1994	Standard on Protective Ensembles for Chemical/Biological Terrorism Incidents	P

Dated: November 10, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–25732 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081004A]

Incidental Take of Marine Mammals Incidental to Specified Activities; Taking of Harbor Seals Incidental to Wall Replacement and Bluff Improvement Projects at La Jolla, San Diego 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 wall replacement and bluff improvement projects at La Jolla, California, has been issued to the City of San Diego.

DATES: Effective from September 20, 2004, through January 1, 2005.

ADDRESSES: The application, a list of references used in this document, and the IHA are available by writing to Stephen L. Leathery, Chief, Permits, Conservation and Education 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.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, NMFS, (301) 713–2322 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

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 (Secretary) 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 regulations are issued.

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

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of actions not pertinent here, the MMPA defines ''harassment'' as:

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

Summary of Request

On May 27, 2004, NMFS received an application from the City of San Diego requesting an IHA for the possible

harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) incidental to cove wall replacement and bluff improvement projects at La Jolla, CA. The purpose of this bluff improvement project is to protect public access along the coast and to maintain public rights-of-way that have been adversely affected by coastal erosion, in a safe and publicly accessible condition. Bluff improvement measures address ongoing marine and subaerial erosion in six study sites, along with the removal of an aging wall above La Jolla Cove. Improvement measures are limited to remediation of only the upper portion of the bluff, allowing natural marine processes to continue unabated. Mitigation of marine erosion associated with splash and spray on the upper sloping portion of the coastal bluff will be limited to re-vegetation, primarily hydroseeding, and some limited container plants, along with a combination of both setting back and deepening the seaward edge of reconstructed sidewalks to provide some structural stiffness and increased stability, as both marine and sub-aerial processes continue to encroach upon bluff-top improvements. Key objectives of the site improvements are to protect lateral public access along the coast, increase public safety, minimize disturbance of the marine environment and its inhabitants, minimize disruption of public recreation and scenic vista opportunities, avoid disruption of public access to coastal areas, minimize visual impacts by re-vegetating manufactured slopes with native vegetation, avoid changes in runoff patterns, maintain pedestrian and vehicular travel around the construction sites, and avoid the use of rip rap. This activity does not include improvements to Children's Pool itself.

Measurement of Airborne Sound Levels

The following section is provided to facilitate an understanding of airborne and impulsive noise characteristics. Amplitude is a measure of the pressure of a sound wave that is usually expressed on a logarithmic scale with units of sound level or intensity called the decibel (dB). Sound pressure level (SPL) is described in units of dB re micro-Pascal (micro-Pa, or µPa); for energy, the sound exposure level (SEL), a measure of the cumulative energy in a noise event, is described in terms of dB re micro-Pa^2 -second; and frequency, often referred to as pitch, is described in units of cycles per second or Hertz (Hz). In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound.

For airborne noise measurements the convention is to use 20 micro-Pa as the reference pressure, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa and is the approximate threshold of human hearing. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html*.

Airborne sounds are also often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. When frequency levels are made to correspond to human hearing, they are referred to as being A-weighted or A-filtered. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting is often used in the analysis of high-amplitude noises like explosions, and corresponds to the relative response to the human ear to sound levels above 85 dB. C-weighting de-emphasizes ear frequency components of less than about 50 Hz. C-weight scaling is also useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms. For continuous noise like rocket launches, the important variables relevant to assessing auditory impacts or behavioral responses are intensity, frequency spectrum, and duration. In this document, whenever possible sound levels have been provided with A-weighting.

Project Description

The Children's Pool area at La Jolla, including Children's Pool Beach and Seal Rock, is a year-round haulout and rookery for harbor seals. Four of the six construction sites are close to where harbor seals may be hauled out, and therefore may result in the incidental harassment of harbor seals. All construction activities will begin no earlier than the effective date of this IHA and will end no later than January 1, 2005. Construction can occur on any site on weekdays between the hours of 8:30 am and 3:30 pm except on national holidays. Demolition and construction may take place simultaneously at all four sites. The duration of construction at any one of these four sites will be limited to six working days total. Demolition of each site is scheduled to last one day. Equipment required for demolition will include hand tools, backhoes, power saws, and pavement breakers and/or jackhammers. No explosives will be used during demolition. The City of San Diego estimates that the maximum received sound exposure level 100 ft (30.5 m) from demolition activities is approximately 90 dBA (re 20 micro-Pa^2 -sec). The equipment involved in these activities will include a concrete mixer, power auger, and hand tools. The maximum received sound exposure level at 100 ft (30.5 m) from construction activities is estimated to be about 81 dBA (re 20 micro-Pa^2 -sec). The entire Cove Wall Replacement and Bluff Improvement Project is expected to take 6 weeks or less. Summaries of the proposed improvements at each of the 4 sites that have a potential to harass harbor seals follows.

Site 55D

This site is located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. At this site, the existing post-and-board wall located on the slope will be removed. The area eroded by the abandoned storm drain will be filled with a reinforced geometric grid at a 1.5:1 slope. The proposed fill of approximately 20 cubic yds (15.3 cubic m) will extend approximately 14 ft (4.3 m) seaward of the existing corrugated metal pipe outlet, and the toe of the fill will terminate approximately 5 ft (1.5 m) from the edge of the sea cliff. The manufactured slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 55F

This site is also located on the 700 block of Coast Boulevard, southeast of Children's Pool Beach. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk will be constructed a minimum of 8 ft (2.4 m) from the top of the existing slope. The new sidewalk will have a deepened structural edge 5 ft (1.5 m) in thickness to provide the structural capacity to span the rubble-filled sea cave below. To minimize runoff, the curb will be installed and the sidewalk will be cross-sloped 1.5 percent toward the street and away from the bluff top. The existing wood posts and metal rails will be removed and new wood posts and metal rails will be located at the outer edge of the relocated sidewalk. The face of the existing vertical slope will be trimmed back somewhat to improve surficial stability and assist in the establishment of a vegetative cover. The exposed slope area will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 57E

This site is located on the 800 block of Coast Boulevard, southwest of Jenner Street, adjacent to Seal Rock. The existing 5 ft-wide (1.5 m) sidewalk will be removed and a new 5 ft-wide (1.5 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Site 58A

Site 58A is located on the 900 block of Coast Boulevard, southwest of Ocean Street. The existing 10 ft-wide (3 m) sidewalk will be removed and a new 10 ft-wide (3 m) sidewalk with a deepened structural edge 5 ft (1.5 m) in thickness will be constructed. The existing wood posts and wood rails will be removed and new wood posts and wood rails will be located at the outer edge of the reconstructed sidewalk. The exposed slope areas will be landscaped with primarily native, erosion control, low water use plants suited to a coastal marine environment.

Comments and Responses

A notice of receipt of the City of San Diego's application for wall replacement and bluff improvement projects at La Jolla, San Diego, CA, and proposed IHA was published in the **Federal Register** on August 20, 2004 (69 FR 51632). That notice described in detail the proposed activity and the marine mammal species that may be affected by it. Additional information on harbor seals found in Central California waters can be found in Marine Mammal Stock Assessment Reports, which is available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*. During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission) and one member of the public. The Commission concurs with NMFS' determinations concerning the impacts of the proposed activities on harbor seals and recommends that the authorization be granted.

Comment 1: This project shouldn't happen because the seals would desert the area for a long period of time, making them homeless. There is much opposition to having seals in the La Jolla area, and this project is a ploy to hurt the seals so that they leave. This would be unfair to the people coming to see them. The comment period should be extended by another 90 days.

*Response:*The intent of this project is not to evict the seals from the area. The bluff-improvements are necessary to increase public safety along the coast and to maintain and protect public access and rights-of-way that have been adversely affected by coastal erosion. Planned improvements will result in increased stability of the seaward edge of sidewalks, resulting in increased safety to pedestrians, including those coming to see the seals. This activity does not include improvements to Children's Pool itself.

The project will not occur over a long period of time. The entire Cove Wall Replacement and Bluff Improvement Project is expected to take 6 weeks or less. The duration of construction at any one of the four construction sites close to where harbor seals may be hauled out will be limited to six working days total. Demolition of each site is scheduled to last one day. Short term impacts that could occur include possible temporary reduction in utilization of the beach or Seal Rock at Children's Pool. These short term impacts may result in a temporary reduced number of seals using the haul out sites during, and potentially past, the hours of construction. However, this area has become a tourist spot for viewing harbor seals, and the current population of seals utilizing the Children's Pool area is accustomed to human activities and regular noise levels from people and traffic along Coast Boulevard. Therefore, potential impacts from the project are expected to be minimal to none. Depending on the disturbance, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site (NOAA, 1996). With the implementation of mitigation measures (see Mitigation), disturbance from construction-related activities is expected to have only a short term negligible impact to a small number of harbor seals. Short-term impacts are expected to result in a temporary reduction in utilization of haulout sites while work is in progress or until seals acclimate to the disturbance, and will not likely result in any permanent reduction in the number of seals at Children's Pool or at Seal Rock.

Section 101(a)(5)(D) of the MMPA specifies a public comment period of 30 days for proposed IHA's.

Comment 2: Seals might be killed or hurt by this project. The take is not incidental when a population is decimated. The take is substantial and the wording of the proposed authorization is misleading to the public. With California's population in the high millions, there is no reason why 27,000 seals cannot be tolerated.

Response: Pacific harbor seals are widely distributed in the North Pacific Ocean. The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assessment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals. However, 27,000 seals will not be affected by this project. Recent population counts show that the harbor seal population in La Jolla is stable at approximately 150–200 seals. The maximum number of harbor seals using the Children's Pool haulout areas at one time can vary between 62 and 172 (H-SWRI, 1995–1997). Therefore, the maximum number that could potentially be impacted would be no more than 172.

As described in the previous response, potential impacts from the project are expected to be minimal to none. Level B harassment may occur if hauled animals flush the haulout and/or move to increase their distance from construction-related activities, such as the presence of workers, noise, and vehicles. Recent studies (Lawson *et al.*, 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to rocket launch sounds with sound exposure levels of 90 dBA (re 20 micro-Pa^2 -sec) or higher for harbor seals. The maximum received levels 100 ft away (30.5 m) from demolition and construction activities are expected to be about 90 dBA and 81 dBA, respectively. 57E is the closest of the four construction sites to any of the haulout areas. This site is approximately 170 ft (51.8 m) from Seal Rock (dependent on tide), and about 350 ft (106.7 m) from Children's Pool Beach. At this distance, construction noise will have attenuated to low levels and there should be little to no impact on the seals. Special attention will be given to this site during construction and monitoring (see Monitoring).

Comment 3: The estimates of seal numbers in the area are often political in nature, designed to give a number that coincides with a desired political action.

Response: NMFS uses all data and information resources available when making determinations. There are groups other than NMFS that collect information on the harbor seals that haulout at or near Children's Pool and Seal Rock. These include Hubbs-Sea World Research Institute and Friends of La Jolla Seals. Additional information

on harbor seals found in Central California waters can be found in NMFS' Marine Mammal Stock Assessment Reports, which is available online at *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

Mitigation

Several mitigation measures to reduce the potential for harassment from wall replacement and bluff improvement construction activities will be implemented under the IHA. The primary mitigation measure is the restriction on the days and times when construction can take place. Demolition will be limited to one day at each of the four sites, ensuring that the highest noise levels will only occur for a short period of time. In addition, construction activities will not take place prior to 8:30 am and will not go beyond 3:30 pm. Harbor seals in this area are known to use haulout areas in greatest numbers in the afternoon. Since construction activities will be finished by 3:30 pm every day, this minimizes the number of harbor seals potentially disturbed. Disturbance to harbor seals has a more serious effect when seals are pupping or nursing, when aggregations are dense, and during the molting period. To ensure that construction activities are not overlapping with the pupping season, the contractor will coordinate with ''Friends of La Jolla Seals'' or Hubbs-SeaWorld Research Institute (HSWRI). Either of these organizations will confirm when the pupping season has come to an end, usually sometime in late June or early July, after the last pup has been weaned. Once this is confirmed, construction activities may begin with the approval of NMFS. The pupping season for harbor seals begins in early February; however pregnant females are hauled out at Children's Pool in the weeks leading up to the pupping season. Accordingly, all construction activity will be completed by the 1st of January, 2005. These mitigation measures will reduce the potential for Level B incidental harassment takes and eliminate the potential for injury or mortality of Pacific harbor seals.

As mentioned, demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. This ensures that demolition will result in a minimal amount of debris on Seal Rock or the nearby beach.

Monitoring

Harbor seal haulouts will be monitored periodically during construction activities. Monitoring will be conducted by a qualified biologist approved by NMFS. During all monitoring periods, the following information will be recorded: date, time, tidal height, maximum number of harbor seals hauled out, number of adults and sub-adults, number of females and males (if possible), and any observed disturbances to the seals. During periods of construction, a description of construction activities will also be recorded. Observations of unusual behaviors, numbers, or distributions of pinnipeds, including any rare or unusual species of marine mammals, will be reported to NMFS' Southwest Science Center allowing transmittal of this information to appropriate agencies and personnel for any potential follow-up observations.

Prior to construction at each of the four sites, three full days of baseline monitoring will occur to assess harbor seal use of the haulouts before construction begins. Wall replacement and bluff stabilization activities will begin with one day of demolition at each site. Monitoring at each site during demolition will start one hour before demolition begins, run all day, and will be completed no sooner than one hour after it ends.

Results from the pre-construction baseline monitoring will determine if mid-day monitoring is necessary for sites 55D, 55F, and 58A during the days of construction following demolition. If it is determined that it is necessary and/or beneficial, monitoring will take place at each site during every day of construction starting one hour before construction begins each day and finishing one hour after it ends each day. If it is determined that mid-day monitoring is not necessary, two 2–hour monitoring sessions will occur each day of construction following demolition. The first session will begin one hour before the start of construction and end one hour after the start of construction, and then begin again one hour before the end of construction and end one hour after construction has finished for the day.

Site 57E is the closest work site to Seal Rock, which is located about 170 feet (51.8 m) away from the site. At this distance, much of the construction noise will have attenuated to low levels. However, NMFS believes careful monitoring of this site is warranted. Despite results from baseline monitoring, monitoring will take place at site 57E during every day of construction starting one hour before construction begins each day and finishing no earlier than one hour after construction ends each day.

Sound levels 100 feet (30.5 m) from each site will be recorded during all periods of monitoring. If at any time indications of a substantial disturbance to harbor seals resulting from construction activities are observed, or if sound levels are found to be above 90 dBA at a distance of 100 feet (30.5 m) from construction at any of the sites, the applicant will contact NMFS to provide this information. It will then be determined if any further mitigation or monitoring measures are needed, such as the installation of sound barriers. However, at this time NMFS is not requiring sound barriers because sound levels appear to be too low at most, if not all, sites to even cause Level B behavioral harassment.

Reporting

A draft report will be submitted to NMFS Regional Administrator, Southwest Region, within 90 days after project completion. The final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft report will be considered to be the final report.

The City of San Diego is planning on sharing and comparing data collected as a result of these monitoring efforts with other interested parties, such as the HSWRI or Friends of La Jolla Seals. Monitoring work during this project may be conducted in collaboration with these groups as well.

Estimates of Take by Harassment

The estimated population of harbor seals in California is 27,863 (NOAA Draft Stock Assesment Report, 2003), with an estimated minimum population of 25,720 for the California stock of harbor seals. Peak numbers of harbor seal counts for the La Jolla area in general were 166 in June, 1996 and 172 in July, 1997 (H-SWRI, 1995–1997). These numbers were recorded at the peak of the breeding season, the typical time of maximum haulout. As stated earlier, the population in La Jolla is stable at approximately 150–200 seals. Population trends from 1999 revealed that the largest counts of seals hauled out on the beach occurred during the period between January and May, with a peak in counts in June at Seal Rock. The maximum number of harbor seals using the Children's Pool haulout areas at one time can vary between 62 and

172 (H-SWRI, 1995–1997). Therefore, the maximum number that could be impacted would be 172. There is no anticipated impact from construction activities on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Marine Mammal Impacts

Level B Harassment may occur if hauled animals flush the haulout and/or move to increase their distance from construction-related activities, such as the presence of workers, noise, and vehicles. Short term impacts that could occur include possible temporary reduction in utilization of the beach or Seal Rock at Children's Pool. These short term impacts may result in a temporary reduced number of seals using the haul out sites during, and potentially past, the hours of construction. However, this area has become a tourist spot for viewing harbor seals, and the current population of seals utilizing the Children's Pool area is accustomed to human activities and regular noise levels from people and traffic along Coast Boulevard. Therefore, potential impacts from the project are expected to be minimal to none. The permanent abandonment of the Children's Pool area is also not anticipated because harbor seals have habituated to traffic noise. Depending on the disturbance, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site (NOAA, 1996).

Recent studies (Lawson *et al.*, 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with sound exposure levels of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals, and 90 dBA (re 20 micro-Pa^2 -sec) or higher for harbor seals. Therefore, it is expected that most received noise levels at the harbor seal haulouts will be below levels that are likely to cause disturbance. However, to date that remains unknown. As stated earlier, the maximum received levels at 100 ft away (30.5 m) from demolition and construction activities are expected to be about 90 dBA and 81 dBA, respectively. Sites 55D and 55F are closest to Children's Pool Beach. These sites are approximately 250 ft (76.2 m) from the beach haulout area used by the harbor seals. At that distance there should be little to no impact on the seals. Sites 57E and 58A are closer to Seal Rock. 58A is almost 400 ft (122 m) from Seal Rock, and is not expected to cause any harassment of the seals hauled out on Seal Rock. 57E is the closest of the four to any of the haulout areas. This site is approximately 170 ft (51.8 m) from Seal Rock (dependant on tide), and about 350 ft (106.7 m) from Children's Pool Beach. At this distance, construction noise will have attenuated to low levels. However, special attention will be given to this site during construction and monitoring (see MONITORING).

Demolition of sidewalks at the top of the bluff slopes and excavation for the new sidewalks may result in some downhill movement of debris. Just prior to the construction necessitating its use, a debris fence will be installed parallel to and just below the bluff edge and held in place with stakes driven by hand using a large hammer. The expected debris would be soil or small pieces of concrete that could be removed by hand or shovel. Noise levels for installing the fence and removing debris trapped in it will be low and unlikely to harass harbor seals. The distance of the sites to Seal Rock or the beach where the seals haul out will not allow debris to fall onto these areas.

Incidental harassment resulting from bluff stabilization construction may occur in all age classes and sexes of harbor seals present in the Children's Pool area. The number of harbor seals at Children's Pool Beach and Seal Rock varies throughout the year. For the population of seals occupying Children's Pool, the numbers of seals that haul out vary with season, tide, and time of day (Hubbs-SeaWorld Research Institute 1995–1997). More haulout area is available to be occupied during low tide. However, sometimes those animals that are on land will move higher up the beach to avoid the approaching tide and thus do not necessarily leave the haulout area. For the La Jolla area in general, a greater number of animals were seen hauled out in late afternoon or evening, regardless of the tide. In general, there is a decrease in counts in late summer through winter in La Jolla. The largest numbers of seals are seen during the molting/breeding season. Also, the number of seals hauled-out generally decreased during the first few calm days after a storm.

Although the seals in the area have become accustomed to the presence of tourists viewing the haulout site, the addition of construction workers, construction equipment (in particular the sudden noise of a jackhammer or power saw), and other project related activities could result in a temporary startle response when harbor seals may flush into the water. However, the likelihood of this occurring is very low, and with the implementation of mitigation measures, disturbance from construction-related activities is expected to have only a short term negligible impact to a small number of harbor seals. Demolition and construction work is not expected to result in injury or mortality because the required work restrictions and mitigation measures will minimize construction-related disturbance. At a maximum, the action is expected to result in a temporary reduction in utilization of haulout sites while work is in progress or until seals acclimate to the disturbance, and will not likely result in any permanent reduction in the number of seals at Children's Pool or at Seal Rock.

Endangered Species Act (ESA)

NMFS has determined that the cove wall replacement and bluff improvement projects 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 (NEPA)

On September 15, 2003, the City of San Diego completed an Environmental Impact Report (EIR) for the La Jolla Cove Wall Replacement and Bluff Improvements Project. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NOAA Fisheries has reviewed the information contained in the EIR and determined that it accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Based on this review and analysis, NOAA Fisheries has adopted the City of San Deigo's EIR as its own document and made a Finding of No Significant Impact on September 2, 2004. As a result, NOAA Fisheries has determined that it is not necessary to issue a new Environmental Assessment (EA), a supplemental EA or an Environmental Impact Statement for the issuance of an IHA to the City of San Diego for this activity.

Determinations

Based on the information contained in the application, the City of San Deigo's EIR, the August 20, 2004 (69 FR 51632)**Federal Register** notice and this document, NOAA Fisheries has determined that the cove wall

replacement and bluff improvement project at La Jolla, CA, will result, at most, in a temporary modification in behavior by Pacific harbor seals by head alerts and/or flushing from the beach. While behavioral modifications may be made by these species as a result of demolition and construction activities, this behavioral change is expected to result in no more than a negligible impact on the affected species. 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 and the distance between the seals and the construction site, the number of potential harassment takings will be small, and no take by injury and/or death is anticipated. The project is not expected to interfere with any subsistence hunts. NMFS has therefore determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to the City of San Diego to take small numbers of Pacific harbor seals incidental to wall replacement and bluff improvement projects, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 15, 2004.

Laurie K. Allen,

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

[FR Doc. 04–25741 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 15, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 22, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection Web site (*http://www.cbp.gov*), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 638/639 is being increased for the partial undoing of special shift, decreasing the limit for Categories 338/339 to account for the quantity being returned to 638/639.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59923, published on October 20, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2004.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on November 22, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
338/339	3,691,064 dozen.
638/639	2,954,972 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–3261 Filed 11–18–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Method and Apparatus for Making Body Heating and Cooling Garments

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR part 404.6, announcement is made of the availability for licensing of U.S. patent No. US 6,813,783 B2 entitled ''Method and Apparatus for Making Body Heating and Cooling Garments'' issued November 9, 2004. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–25680 Filed 11–18–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Athens Navigation Project, Village of Athens, Greene County, NY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, is preparing a Draft Environmental Impact Statement (DEIS) to ascertain compliance with and to lead to the production of a National Environmental Policy Act (NEPA) document in accordance with the President's Council of Environmental Quality (CEQ) Rules and Regulations, as defined and