

Based on its review of the comments, examination of mapping methodologies currently employed at the State level, and consultation with the FCC, NTIA finds that data at the address level, or as close to the address level as practicable considering the technology type being employed, as set out in the *Technical Appendix*, should be collected by each awardee under this Program and that such data must be provided to NTIA pursuant to the terms of the Notice. State broadband maps developed pursuant to awards under this Program should display data at the address level, or as close to the address level as practicable considering the technology type being employed and as provided more fully in the *Technical Appendix*.

*State Models.* NTIA has gathered information from a variety of sources, including mapping experts from many States. Additionally, commenters provided suggestions on what maps NTIA should use as models for the national broadband map.<sup>44</sup> After careful consideration and consultation with the FCC and other agencies, determined that none of the suggested State map models contain all of the data sets necessary for the national broadband map, but may prove to be instructive and the source of valuable ideas. The information required under the Notice and *Technical Appendix*, however, is the principal source of information for the national map and guidance for applicants under this Program.

*State Collection of Mapping Information.* State participation is critical to the national broadband mapping effort. Commenters expressed a range of opinions on the information that States should be required to collect as a condition of receiving statewide inventory grants.<sup>45</sup> In order to promote

Valley Cooperative Telephone Association at 6 (Apr. 13, 2009) (census tract level per FCC form 477 data collection); Traverse Technologies, Inc. at 2 (Mar. 25, 2009) (providers' customer service areas).

<sup>44</sup> See, e.g., CostQuest/LinkAmerica Alliance at 17 (Alabama map); State of Arizona Government Information Technology Agency at 9 (Arizona Map); City and County of San Francisco at 25 (Apr. 13, 2009) (California Map); State of Iowa at 7 (Hawaii map); Oakland County, Michigan at 7 (Illinois Map); ConnectKentucky at 3 (Kentucky Map); Joint Comments at 8, 13 (Massachusetts Map); Diane Wells at 1, 2 (Apr. 13, 2009) (Minnesota Map); State of Iowa at 7 (Missouri Map); Joint Response of the New York State CIO *et al.* at 4 (New York Map); Pennsylvania Governor's Office of Administration at 8 (North Carolina Map); Pennsylvania Governor's Office of Administration at 8 (Pennsylvania Map); Scott County Mayor Ricky A. Keeton at 1 (Apr. 13, 2009) (Tennessee Map); Stratum Broadband at 19 (Mar. 31, 2009) (Vermont Map); City of Boston at 9 (Virginia Tech Map); ViaStat, Inc. at 14, 15 (Apr. 13, 2009) (Australia Map); City of Boston at 9 (New Zealand Map).

<sup>45</sup> The RFI included a question regarding the specific information the States should collect as

the efficient creation of the State and national broadband maps, NTIA and RUS will require that broadband internet service providers that apply for infrastructure grants under BTOP and RUS' Broadband Initiatives Program (BIP) agree to provide the data that awardees under this Program are required to collect pursuant to the *Technical Appendix*. NTIA and RUS find that the BIP/BTOP program's incentive structure should complement the goals of the State and national mapping efforts and this requirement will further facilitate data collection.

*Technical Specifications of State Maps.* The BDIA is silent on the technical specifications that should be included in each State map. NTIA sought comment in the RFI on the specifications that should be required of State Broadband Data Program grantees to ensure that the data collected at the State level can be efficiently incorporated into the national broadband map.<sup>46</sup> As stated above, NTIA also consulted with the FCC and examined mapping methodologies currently employed at the State level, regarding the technical specifications with which awardees should comply in composing their maps with program funds.

In response to the RFI, commenters provided varying insights on the data sets that should be displayed,<sup>47</sup> and the technical format of the information

conditions of receiving statewide inventory grants (74 FR 10718). Most commenters agreed that States should collect information. See, e.g., WISPA at 13. There was disagreement over whether State data collection should be a condition to qualify for grants. See, e.g., Windstream Communications, Inc. at 27. Some commenters did not think providers should be required to provide mapping data. See, e.g., Independent Telephone and Telecommunications Alliance at 35. Some commenters recommended that providers be required to submit data. See, e.g., State of Missouri/Missouri Public Services Commission at 12.

<sup>46</sup> 74 FR at 10718.

<sup>47</sup> NTIA received comments on the technical specifications of the map including the following: Triangle J Council of Governments Cable Broadband Consortium at 15 (Apr. 13, 2009) (NTIA should establish a standard template, such as a database directory, by which information is submitted); CostQuest/LinkAmerica Alliance at 18 (NTIA should clearly define certain data sets such as: Coverage areas, speed and service attributes, quality of service data, technologies, infrastructure elements, demand and demographic data price, deployment costs); The People of the State of California and Governor Arnold Schwarzenegger at 46 (NTIA should establish definitions for address); National Tribal Telecommunications Association at 3, 4 (NTIA should show customer class (residential, business, etc.); Joint Response of the New York State CIO *et al.* at 11 (data should allow for multiple demographic overlays); Apex CoVantage at 4 (link the customer database to the provider database and link the political data to census data); SED—Council of Governments at 6 (searchable by address and display in graphical rather than tabular format).

provided.<sup>48</sup> NTIA has determined to require that data be collected as specified in the *Technical Appendix* attached hereto.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XQ00

#### Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received an application from United Launch Alliance (ULA) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting *Delta Mariner* operations, cargo unloading activities, harbor maintenance dredging, and kelp habitat mitigation activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize ULA to take, by Level B harassment only, small numbers of two species of pinnipeds at south VAFB beginning August, 2009.

**DATES:** Comments and information must be received no later than August 7, 2009.

**ADDRESSES:** Comments on the application should be addressed to

<sup>48</sup> Link America Alliance at 17 (NTIA should follow Federal Geospatial Data Content standards that included geographic and topographic information); University of Nebraska at 4 (NTIA should require GIS software compatibility); The People of the State of California and Governor Arnold Schwarzenegger at 47 (NTIA should create Metadata (data about the data) according to Federal Geospatial Data Content (FGDC) standards to be generated after geo-coding); State of Arizona Government Information Technology Agency at 9 (NTIA should create Metadata (data about the data) according to ESRI mapping standards); CostQuest/Link America Alliance at 18, 19 (maps and features (data layers) should be collected in accordance with Open Geospatial Consortium (OGC) standards for geospatial data).

Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.0648-XQ00@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see FOR FURTHER INFORMATION CONTACT), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:**

Jeannine Cody or Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, 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 United States 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.

Authorization for incidental taking shall be granted if NMFS finds that the 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 if the permissible methods of taking and requirements pertaining to the mitigation, 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. Except with respect to certain activities 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 [A 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"].

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i), the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii).

**Summary of Request**

On June 5, 2009, NMFS received an application from ULA requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. These activities will support Delta IV/EELV launch activities from the Space Launch Complex at VAFB.

NMFS has issued Incidental Harassment Authorizations (IHAs) to The Boeing Company, now ULA, on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), May 20, 2004 (69 FR 29696, May 25, 2004), May 23, 2005 (70 FR 30697, May 27, 2005), June 20, 2006 (71 FR 36321, June 26, 2006), June 21, 2007 (72 FR 34444, June 22, 2007), and August 19, 2008 (73 FR 49649, August 22, 2008) each for a one-year period.

ULA did not conduct any dredging activities between 2003 and 2008, and accordingly, was not required to conduct any monitoring activities. For the 2008 IHA, which expires on August 18, 2009, ULA expects to commence dredging operations in July, 2009. ULA will submit a monitoring report 120 days after the expiration of the 2008 IHA.

**Description of the Specified Activity**

*Delta Mariner* off-loading operations and associated cargo movements will occur a maximum of three times per year. The activities will take place within the harbor located within the VAFB, approximately 2.5 miles (mi) (4.02 kilometers (km) south of Point Arguello, CA and approximately 1 mi (1.61 km) south of the nearest marine mammal pupping site (i.e., Rocky Point).

**Delta Mariner Operations**

The *Delta Mariner* is a 312-foot (ft) (95.1-meter (m)) long, 84-ft (25.6-m) wide steel hull ocean-going vessel capable of operating at an 8-ft (2.4-m) draft. The vessel will enter the harbor stern first, during daylight hours at high tide, approaching the wharf at less than 0.75 knot. At least one tugboat will always accompany the *Delta Mariner* during visits to the VAFB harbor. Departure will occur under the same conditions.

Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering the vessel into position and a brief sound from the cargo bay door when it becomes disengaged.

**Harbor Maintenance Dredging**

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing up to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. ULA estimates that the noise levels emanating from within 50 ft of the dredging and construction equipment would range from 56 to 93 decibels (dB) (A-weighted) (re 20 FPascals at 1-m). Thus, there is the potential that an animal hauled out on the beach or breakwater could hear the dredging activities. Dredge operations, from set-up to tear-down, would continue 24-hours a day for three to five weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2009–2010 is contained in the application, which is available upon request (see **ADDRESSES**), and in the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

#### **Cargo Movement Activities**

The Delta IV/EELV launch vehicle is comprised of a common booster core (CBC) and other mechanical elements. Removal of the CBC from the vessel requires the use of an elevating platform transporter (EPT). ULA measured the EPT's sound levels within 20 ft of the exhaust pipe with the engine running at mid-speed and observed sound levels of 85 dB (re 20 FPascals at 1–m) (Acentech, 1998). The removal procedure requires two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62 to 70 dB A-weighted at 200 ft (60.9 m) away, and 84 to 112 dB A-weighted at 25 ft (7.6 m) away.

For cargo other than the CBC, ULA will use a standard diesel truck tractor to offload containers containing flight hardware items from the *Delta Mariner*. The tractor would generate a sound level of approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total docking and cargo movement activities is estimated to last approximately no more than 18 hours in good weather.

#### **Marine Mammals Affected by the Activity**

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion.

##### *Pacific Harbor Seals*

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent minimum population estimate of Pacific harbor seals in California is 31,600 seals (Carretta *et al.*, 2008). Carretta *et al.*, (2008) report that net production rates appeared to decrease from 1982 to 1994 and hypothesized that the decrease occurred at the same time as a decrease in human-caused mortality and may indicate that the population has reached its environmental carrying capacity.

The total population of harbor seals on VAFB is now estimated to be 1,118 (maximum of 500 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data

(Thorson, 2001). The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1600 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at a site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where ULA will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement.

The maximum number of seals present during the 2001 dredging of the harbor was 23 (averaging 7 per observation period), and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 per day when tidal conditions were favorable for hauling out. Dredging and reef enhancement did not occur from 2003–2008.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt, which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

##### *California Sea Lions*

During the wharf modification activity in June–July 2002, California sea lions were observed hauling out on the breakwater in small numbers (up to 6 individuals). Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, ULA included sea lions in the request.

California sea lions range from British Columbia to Mexico. The most recent population estimate for the California sea lions range is 238,000 (Carretta *et al.*, 2008). Between 1975 and 2001, the population growth rate was 5.4–6.1 percent. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island (SMI), with the population ranging from 2,235 to over 17,000.

The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. ULA notes that they have observed at least 100 sea lions during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there had never been any previously reported sea lion births at VAFB (Thorson, 2003). Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves *et al.*, 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted sub-adult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to SMI and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on

land occurs in September and October during the post-breeding dispersal, although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

#### *Other Marine Mammals*

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by ULA's activities. These four species are: the northern elephant seal, the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lion (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and distribution of these species can be found in the NMFS Stock Assessment Reports at <http://www.nmfs.noaa.gov/pr/sars/>.

#### **Potential Effects of Activities on Marine Mammals**

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation and the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out on the beach and rocks near south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during ULA's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dB A-weighted of noise would be approximately 72 dB A-weighted at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dB A-weighted, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84–112 dB A-weighted at 25 ft (7.6 m) away and 62–70 dB A-weighted at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the

horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dBA (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA and NMFS' implementing regulations, if harbor activities disrupt the behavioral patterns of harbor seals or sea lions, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water of hundreds of animals, may rise to the degree of Level A harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or at pupping sites could potentially lead to takes by injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor because, on average, the number of harbor seals hauled out near the site is less than 30 individuals, and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report

(ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities, which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks, and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from zero to 19, and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts, although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application, NMFS' 2005 Environmental Assessment (EA), and the United States Air Force's (USAF) 2001 Final EA.

#### **Numbers of Marine Mammals Expected to be Harassed**

ULA estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2009–2010, NMFS estimates that a maximum of 767 to 1,570 Pacific harbor seals may be subject to Level B harassment out of a total estimated population of 31,600. These numbers are small relative to this population size (2.4–5 percent).

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions may be subject to Level B harassment out of a total estimated population of 238,000. These numbers are small relative to this population size (less than 0.1 percent).

Up to 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment out of a total estimated population of 124,000 in 2005 (Carretta *et al.*, 2008).

These numbers are small relative to this population size (less than 0.01 percent).

#### **Possible Effects of Activities on Marine Mammal Habitat**

ULA does not anticipate any loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

ULA anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, ULA will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about 1 ton (907 kg). The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. ULA plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

#### **Proposed Mitigation Measures**

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA proposes to undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling pinnipeds at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of ULA's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks, and the vessel will reduce speed to 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

#### **Proposed Monitoring Measures**

As part of its 2002 application, Boeing, now ULA, provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for the 2009 IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Monitoring results from previous years of these activities have been reviewed and incorporated into the analysis of potential effects in this document.

#### **Proposed Reporting**

ULA will notify NMFS two weeks prior to initiation of each activity. After each activity is completed, ULA will provide a report to NMFS within 120 days. This report will provide dates,

times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report will include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

#### **Negligible Impact Determination**

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a dredging program within VAFB may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B Harassment) of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the dredging operations, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of dredging operations, the number of potential harassment takings is estimated to be relatively small in light of the population size.

In addition, no take by death and/or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document.

#### **Endangered Species Act (ESA)**

This action will not affect species listed under the ESA that are under NMFS' jurisdiction. VAFB formally consulted with the U.S. Fish and Wildlife Service in 1998 on the possible take of southern sea otters during Boeing's, now ULA, harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the EELV Program is not likely to jeopardize the continued existence of the southern sea otter, and no injury or mortality is expected. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

### National Environmental Policy Act

In 2001, the USAF prepared an EA for Harbor Activities Associated with the Delta IV Program at VAFB. In 2005, NMFS prepared an EA augmenting the information contained in the USAF EA and issued a Finding of No Significant Impact on the issuance of an IHA for Boeing's, now ULA, harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). ULA's proposed activities and impacts for 2009-2010 are expected to be within the scope of NMFS' 2005 EA and FONSI.

### Preliminary Conclusions

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily concluded that the proposed activity will incidentally take, by level B behavioral harassment only, small numbers of marine mammals. There is no subsistence harvest of marine mammals in the proposed research area; therefore, the provision relating to impacts on certain subsistence activities is not implicated by this proposed action. No take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures proposed in this document.

Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

### Proposed Authorization

NMFS proposes to issue an IHA to ULA for the Delta IV/EELV Program during August 2009 to August 2010, provided that the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 2, 2009.

**James H. Lecky,**

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

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### CONSUMER PRODUCT SAFETY COMMISSION

#### Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget (OMB).

**DATES:** The Office of the Secretary must receive written comments not later than September 8, 2009.

**ADDRESSES:** Written comments should be captioned "Residential Garage Door Operators" and e-mailed to the Office of the Secretary at [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Comments may also be sent by facsimile to (301) 504-0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504-7671 or by e-mail to [lglatz@cpsc.gov](mailto:lglatz@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** In 1990, Congress enacted legislation requiring residential garage door operators to comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*). The entrapment protection requirements of UL Standard 325 are codified into the Safety

Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211. Automatic residential garage door operators must comply with the latest edition of the Commission's regulations at 16 CFR Part 1211.

OMB approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041-0125. OMB's most recent approval will expire on October 31, 2009. The Commission now proposes to request an extension of approval without changes of this collection of information.

#### A. Certification Requirements

Section 203 of Public Law 101-608 requires that UL Standard 325 shall be considered to be a consumer product safety standard under section 9 of the CPSA (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission to issue a certificate stating that the product complies with all applicable rules, bans, standards or regulations. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program and specify each such rule, ban, standard or regulation applicable to the product.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms "establish and maintain" records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part