

International Trade & Industries Co., Ltd.; and Xingtai Coal Chemical Co., Ltd. With the exception of CCT, which withdrew its request for review, as noted above, Petitioners were the only party to request a review of these companies.

#### Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. CCT and Petitioners' requests were submitted within the 90-day period, and thus are timely. Because CCT and Petitioners' withdrawal of requests for review are timely and because there is no longer a review request for the above-mentioned companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to the above listed companies.

#### Assessment Rates

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded and which have a separate rate, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

#### Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or

destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 8, 2009.

#### John M. Andersen,

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-22337 Filed 9-16-04; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for the Stellwagen Bank National Marine Sanctuary Advisory Council

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC)

**ACTION:** Notice and request for applications.

**SUMMARY:** The ONMS is seeking applicants for the following seats on The Stellwagen Bank National Marine Sanctuary Advisory Council (Council): Member and Alternate three-year terms for (1) Research; (1) Conservation; (1) Education; (1) Marine Transportation; (1) Recreational Fishing; (1) Mobile Gear Commercial Fishing; (1) At-Large, and (1) At-Large (Member only). Additionally seeking applications for two-year term (1) Education (Member) and (1) Conservation (Alternate) seats. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve two and three year terms, pursuant to the Council's Charter. The Council consists also of three state and three Federal non voting ex-officio seats.

**DATES:** Applications are due by 18 December 2009.

**ADDRESSES:** Application kits may be obtained from *Elizabeth.Stokes@noaa.gov*, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066. Telephone 781-545-8026, ext. 201. Completed applications should be sent to the same address or e-mail, or faxed to 781-545-8036.

**FOR FURTHER INFORMATION CONTACT:** *Nathalie.Ward@noaa.gov*, External Affairs Coordinator, telephone: 781-545-8026, ext. 206.

**SUPPLEMENTARY INFORMATION:** The Council was established in March 2001 to assure continued public participation in the management of the Sanctuary. The Council's 23 members represent a variety of local user groups, as well as the general public, plus seven local, state and Federal government agencies. Since its establishment, the Council has played a vital role in advising NOAA on critical issues and is currently focused on the sanctuary's final five-year Management Plan.

The Stellwagen Bank National Marine Sanctuary encompasses 842 square miles of ocean, stretching between Cape Ann and Cape Cod. Renowned for its scenic beauty and remarkable productivity, the sanctuary supports a rich diversity of marine life including 22 species of marine mammals, more than 30 species of seabirds, over 60 species of fishes, and hundreds of marine invertebrates and plants.

**Authority:** 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 8, 2009.

#### Daniel J. Basta,

*Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E9-22161 Filed 9-15-09; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XQ29

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Boom Exercise Drills at Point Mugu, California

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Naval Base Ventura County (NBVC) Point Mugu to take marine mammals, by harassment, incidental to boom deployment exercises at Point Mugu, California.

**DATES:** Effective September 14, 2009, through January 31, 2010.

**ADDRESSES:** A copy of the application containing a list of the references used in this document and the IHA may be obtained by writing to 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, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext 156, or Monica DeAngelis, Southwest Regional Office, (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 to allow, upon request, the incidental, but not intentional, taking of small numbers 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.

Authorization for incidental takings 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 (where relevant), 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 U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. 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 the authorization.

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 ["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**

NMFS received an application on May 12, 2009, from NBVC Point Mugu for the taking, by harassment, of marine mammals incidental to boom exercise drills at Point Mugu, California. As part of the NBVC Spill Response Program, boom deployment methods in the area contingency plan (U.S. Coast Guard, 2007) need to be tested to ensure response plans for spills are effective and can realistically be achieved. This will also provide training to spill responders, giving them the required training to successfully deploy the booms in the event of an oil spill. The activity will occur within Mugu Lagoon within NBVC Point Mugu. Watercraft operating in the project area will likely affect seals by causing them to disperse from haul-out sites into the adjacent waters. No harassment by acoustic disturbance is anticipated from the boom exercise drill. NBVC Point Mugu requested an authorization to take harbor seals (*Phoca vitulina*) by Level B harassment.

**Description of the Specified Activity**

The purpose of this exercise is to develop response strategies that will provide the best possible protection for the lagoon in the event of an oil spill. To protect Mugu Lagoon from offshore oil-spills, the boom needs to be deployed near the mouth of the estuary to keep offshore oil from entering

sensitive estuarine habitat. The booms will be attached to zodiac watercraft, and the vessels will cross the estuary and anchor the boom on the north and south side of the estuary. Booming strategies were tested in September 2008, where it became evident that the strategy proposed in 2008 could not be accomplished due to strong currents and the fact that the boom was not placed at a wide enough angle. A new boom deployment strategy will now be tested (which includes increasing the angle at which the boom is placed in relation to the current); however, this changes the location of the activity and requires the boom to be situated within a regular harbor seal haul-out.

The boom exercise drill will occur annually during the month of September; however, training may need to be rescheduled for October or November (or possibly even later), depending on availability of SUPSALV staff. Therefore, the IHA is effective from September through January 2010. The exercise will last 5 days. Only days 2 through 4 have the potential to disturb harbor seals. A detailed overview of the activity was provided in the Notice of Proposed IHA (74 FR 36463, July 23, 2009). No changes have been made to the proposed activities.

**Comments and Responses**

A notice of receipt of NBVC's application and NMFS' proposal to issue an IHA to NBVC Point Mugu was published in the **Federal Register** on July 23, 2009 (74 FR 36463). During the 30-day public comment period, NMFS received a letter from the Marine Mammal Commission, which recommended that NMFS issue the requested IHA provided that all reasonable measures will be taken to ensure the least practicable impact on the subject species and the required mitigation and monitoring activities are carried out, as described in NMFS' July 23, 2009 **Federal Register** Notice (74 FR 36463) and the application. All measures proposed in the initial **Federal Register** notice are included in the authorization and NMFS has determined that they will ensure the least practicable impact on the subject species. NMFS received one other letter from the Bureau of Land Management (BLM). The BLM appreciated the opportunity to comment but stated that the BLM has no jurisdiction or authority with respect to the project, the BLM does not have experience or information relevant to the project, nor does the BLM intend to submit comments regarding the project.

### Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal species that will likely be affected by the activity and that are found in the immediate area of the boom drill exercise. The mudflats within Mugu Lagoon are used for resting, molting, and breeding of harbor seals. Mugu Lagoon is one of the few mainland pupping sites, with 60 pups born in 2008. The harbor seal is not listed as threatened or endangered under the Endangered Species Act (ESA), and the California stock, members of which occur in the Mugu Lagoon, is not considered a strategic stock under the MMPA. No other marine mammals are expected to occur in the area of NBVC's activity. A description of other marine mammals found in Mugu Lagoon was provided in the Notice of Proposed IHA (74 FR 36463, July 23, 2009).

NBVC Point Mugu has compiled information on the abundance, status, and distribution of harbor seals in Mugu Lagoon from surveys that they have conducted every month from April 1992 through February 2009, with the exception of 1998, when counts were made only during the period from June through August and from NMFS Stock Assessment Reports (SARs). This information may be viewed in NBVC Point Mugu's application (see **ADDRESSES**). Additional information is available in the NMFS SARs, which are available on the internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf>.

### Potential Effects on Marine Mammals

The boom exercise activities within Mugu Lagoon will introduce boats into the estuary, which are not allowed under normal conditions. It is anticipated that as the boats approach the seals (within approximately 200 ft [61 m]), seals will likely enter the water for safety. It is anticipated that seals located further away from the water (i.e., further up on the haul-out site) will move closer to the water in order to be able to move quickly into the water if needed.

Harbor seals hauled out on shore can be disturbed by passing hikers, recreational vehicles, and small boats. This has been noted in many areas, including the western U.S. and Alaska, eastern Canada, and western Europe (e.g., Bowles and Stewart, 1980; Reijnders, 1981; Renouf *et al.*, 1981; Allen *et al.*, 1984; Osborn, 1985; Brasseur, 1993; Suryan, 1993; Swift and Morgan, 1993). Harbor seals spent more time scanning and less time sleeping in

areas with human disturbance and occasional hunting (Terhune, 1985). In the absence of hunting or active harassment, habituation likely occurs (Awbrey, 1980; Bonner, 1982; Thompson, 1992; Brasseur, 1993).

Startle responses or stampedes are not expected to occur, as boats will be visible and will slowly approach the haul-out sites, allowing the seals to see the approaching vessels in advance of their arrival at the haul-out site. This will provide time for individual seals to either move towards or enter the water for safety if necessary. It is anticipated that the seals will move further east down the mudflats or closer towards the mouth of the estuary to avoid the disturbance associated with the presence of the boats and the boom.

Although this booming location is used year-round as a haul-out site for harbor seals, impacts to seals as a result of the activity are expected to be minimal and short-term in nature. Impacts are expected to be limited to Level B behavioral harassment. The training exercise will likely displace harbor seals from the immediate proposed activity area, resulting in hauled out seals moving into the water when watercraft (zodiacs) are placing or maintaining the boom in close proximity to hauled out seals. As there are additional mudflats to haul-out on away from the exercise area, seals will likely move to those sites and use as a haul-out during the boom exercise. Additionally, since a majority of the booming activity will occur during high-tides when zodiacs are able to navigate in the estuary, very few seals should be displaced, as mudflats would be inundated and most seals would be in the estuarine waters or out foraging. No injury or mortality of harbor seals is anticipated as a result of this activity.

### Anticipated Effects on Habitat

The seals do not feed when hauled out in the lagoon. The seals leave Mugu Lagoon to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998), therefore it is not expected that the boom exercise activities will have any impact on the food or feeding success of these seals. The boom exercise is not expected to cause significant impacts on habitats used by seals in Mugu Lagoon or on the food sources that these seals utilize. Additionally, no loss or modification of the habitat used by harbor seal populations that haul out within Mugu Lagoon is expected. A full description of anticipated effects on habitat was provided in the Notice of Proposed IHA (74 FR 36463, July 23, 2009).

### Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The following mitigation measures have been included in the IHA: (1) The exercise will occur outside of the harbor seal pupping season of February through April; (2) If seals are hauled out within the exercise area before commencement of the exercise, a boat will move slowly (i.e., not at full speed, just above idle) towards the animals in order to have them move slowly into the water in order to avoid stampedes into the water; (3) A boat will remain active in the immediate activity area when tides are high enough for boat activity/movement to reduce the chances of seals hauling out in the exercise area during low activity periods. This would minimize the number of seals likely disturbed should activity levels need to be increased; (4) If the boom placement appears to be holding successfully, then boats will refrain from movement to reduce any additional disturbance events; and (5) The majority of the boom deployment exercise activities will occur at high tide when fewer harbor seals are expected to be on the haul-outs.

NMFS carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required

mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

NBVC biologists will monitor the haul-out areas during the exercise to document and characterize any observed responses by harbor seals to the boom exercise drill. The monitoring will be designed to determine if there are disturbance reactions and to determine how many seals are disturbed by boat activity. Every 2 hours (0700–1600), biologists will count seals hauled out using a spotting scope and identify haul-out locations. Regarding data to be recorded about the seals present, at a minimum, biologists must record numbers and sex of each age class (if determinable), movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement, and description of reactions. NMFS will review the qualifications of each biologist and approve their selection in advance of the proposed activities.

NBVC will establish a land-based monitoring program to assess effects on the harbor seals hauled out in the estuary. This monitoring will occur at the area during the entire period when boats are in the water. The monitoring will be conducted via direct observation. Through this method, seal reactions, as indicated by numbers of seals hauled out and haul-out locations, will be documented during the exercise. This monitoring will also provide data required to characterize the extent and nature of "taking". The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring in the same region. NBVC Point Mugu will discuss coordination of its monitoring program with other entities that may be conducting related work insofar as this

is practical and desirable. As standard procedure, shore count data will be made available to NMFS staff.

NBVC Point Mugu Environmental Division personnel will survey the exercise area prior to activities to count the number of seals and to identify locations before the exercise begins. These marine mammal monitors will also ensure that the mitigation measures (described in the previous section of this document) are being implemented. The biological monitor will make observations as the exercise activities commence and continue to make observations while activities are underway. Depending on results of these initial observations and subsequent planned activities, NBVC's monitors will decide each day whether monitoring for the entire day is needed. If the boom is in place and holding, and there is no need for boats to re-enter the water, then no monitoring will be conducted, other than surveys every 2 hours. If boats again are required to enter the exercise area, biologists will be called and return immediately to the drill site. NBVC anticipates that monitoring will occur throughout the first morning, and, if the boom is placed successfully, the site will be visited once every 2 hours to conduct a survey, until it is decided to pull the boom.

In addition to recording specific biological information described earlier in this section, the marine mammal monitors will record a variety of other information, which will include: (1) Date and time of the activity; (2) tidal state (the number of hours before or after peak flood tide; exact times for local high tides will be determined by consulting relevant tide tables); (3) weather condition; (4) horizontal visibility; (5) occurrence, or planned occurrence of any other event that might result in behavioral reactions by seals within the lagoon and therefore affect numbers hauled out (such as unusual military aircraft activity or other anthropogenic activities in or around the lagoon); (6) current state of the exercise (i.e., boom being placed, remains in place); and (7) approximate distance of boat from seals when seals react and enter the water.

NBVC will prepare and submit to the NMFS Office of Protected Resources and NMFS Southwest Regional Office a draft report describing the activities that were conducted, marine mammal monitoring work and results, and other information as described in the preceding paragraphs 90 days after the activities cease or after expiration of the IHA, whichever occurs first. This report would include all monitoring results from each annual exercise event. This

report will summarize the results of the activities, summarize seal behavioral observations, and estimate the amount and nature of "take" of seals by harassment or in other ways. It will also provide locations and numbers of seals hauled out away from the exercise area. The 90-day report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. If a freshly dead or seriously injured pinniped is found during activity monitoring surveys, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

### Estimated Take by Incidental 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 [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]. Only take by Level B behavioral harassment is anticipated and authorized as a result of the boom exercise drills. The presence of the boats in the water approaching the haul-out sites have the potential to startle hauled out harbor seals and cause them to enter the water and relocate to other haul-outs closer to the mouth of the lagoon or outside of the lagoon. Although there will be increased boat activity in the area of these haul-out sites, vessel strikes of pinnipeds are not expected to occur, as boats will be approaching at very slow speeds in order to reduce startle reactions by the animals. There is no evidence that the planned activities could result in serious injury or mortality. The mitigation and monitoring measures required to be implemented (mentioned earlier in this document) during the exercise will minimize any potential risk to injury or mortality.

The Notice of Proposed IHA (74 FR 36463, July 23, 2009) included an in-depth discussion of the methodology used by NBVC to estimate take by harassment incidental to the boom deployment exercise and the numbers of harbor seals that might be affected by the exercise. Additional information can also be found in NBVC's application (see ADDRESSES). A summary is provided here.

The Navy estimates the number of hauled out seals within the lagoon using census data obtained during ground-based surveys of the lagoon by staff of the Point Mugu Environmental Division. To estimate the likely potential numbers of harbor seals that might be hauled out within the lagoon during the September period of the activity, the Navy calculated using the low counts in September from 2003–2008, as low counts are usually associated with higher tides when the activity is planned to occur. The mean number of low counts is 57 seals. Take would be expected at the beginning of the exercise as boats are put into the water and seals would be slowly moved off the haul-out. Using mean low numbers for the month of September since 2003, 57 seals could be disturbed and move into the water each time the boats are launched (days 2–4). Seals would likely move to a mudflat away from the boom exercise activity. However once boats are finished deploying the boom and boats return to shore, seals may return to mudflats in the immediate area. In the event NBVC staff need to return to the water to check or adjust the boom, there is a possibility there could be another displacement of seals from the mudflats in the project area. NBVC has projected that it may be necessary to return to the site three times during the day, meaning that there would be three opportunities for seals to return to the exercise area each day (57 seals x 3 movements x 3 days), which would equal 513 individual displacement events (i.e., takes). If the boom placement is successful, it would likely lead to fewer disturbance events. However, if the boom placement is problematic, this could result in additional disturbance events. Moreover, these numbers are likely overestimations of actual take estimates, as harbor seal counts are not conducted during high tide events due to low numbers of seals. Therefore, based on these considerations, NMFS has authorized 513 takes of harbor seals by Level B behavioral harassment incidental to NBVC Point Mugu's boom exercise drill.

#### **Negligible Impact and Small Numbers Analysis and Determination**

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." In making a negligible impact determination, NMFS considers: (1) the number of anticipated mortalities; (2) the number and nature of

anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of NBVC Point Mugu's boom exercise drills, and none are authorized. Takes will be limited to Level B behavioral harassment over a 3 day period in the month of September (which may possibly slip to October or November, depending on contractor availability). As mentioned previously, NMFS estimates that 513 harbor seal takes may occur as a result of the activity. It is possible that some individual animals may be taken more than once if the animal returns to the site on one of the later days of the exercise.

There is no habitat of significance for this species. While Mugu Lagoon is one of the few mainland pupping sites for harbor seals, the activity will occur outside of the harbor seal pupping season of February through April. While these haul-out sites are used for resting throughout the year, few (if any) seals are expected to be found on the haul-outs during the drill because the activity will occur at high tide when most animals are in the water. Additionally, there are other haul-out sites in other parts of the lagoon that seals can use during the exercise. The activity is not expected to impact rates of recruitment or survival of harbor seals since no mortality (which would remove individuals from the population) or injury are anticipated to occur. Only short-term Level B behavioral harassment is anticipated to occur over a very short period of time (maximum of 3 days), occurring at very limited times of the day. Additionally, the activity would occur at a time of year when breeding does not occur.

Harbor seals are not listed as threatened or endangered under the ESA. Additionally, the California stock of harbor seals is not listed as depleted under the MMPA. Survey counts conducted by NBVC Point Mugu Environmental Division staff indicate that numbers of harbor seals have increased with an average of 83 seals in 1992 to an average of 231 seals in 2006.

The most recent SAR for the California stock of harbor seals provides a population estimate of 34,233 individuals (Carretta *et al.*, 2009). The take estimate of 513 individuals represents 1.5 percent of the stock size. This estimate does not take into account that survey data is collected during lower tides when more animals are likely to be present on the haul-out sites and the fact that three events may not need to occur per day on each of the

three days. Therefore, it is estimated that 1.5 percent of the California stock of harbor seals will be taken by Level B behavioral harassment during the planned exercise if no animals are taken more than once.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that NBVC Point Mugu's boom deployment exercise will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the boom deployment exercise will have a negligible impact on the affected species or stocks.

#### **Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action.

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

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

#### **National Environmental Policy Act (NEPA)**

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

#### **Authorization**

As a result of these determinations, NMFS has issued an IHA to NBVC Point Mugu for the take of harbor seals incidental to boom deployment exercises at Point Mugu, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 10, 2009.

**James H. Lecky,**

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

[FR Doc. E9–22329 Filed 9–15–09; 8:45 am]

BILLING CODE 3510–22–S

---

## **DEPARTMENT OF EDUCATION**

### **Notice of Proposed Information Collection Requests**

**AGENCY:** Department of Education.