

will have a negligible impact on the species in the specified geographic region.

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 USGS's planned research activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey will have a negligible impact on the affected species or stocks of marine mammals; and that impacts to affected species or stocks of marine mammals have been mitigated to the lowest level practicable.

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

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (deep, offshore waters of the central GOA) that implicate MMPA section 101(a)(5)(D).

#### **Endangered Species Act**

Of the species of marine mammals that may occur in the survey area, several are listed as endangered under the ESA, including the North Pacific right, humpback, sei, fin, blue, and sperm whales, as well as the Cook Inlet DPS of beluga whales and the western stock of Steller sea lions. The eastern stock of Steller sea lions is listed as threatened, as is the southwest Alaska DPS of the sea otter. Under section 7 of the ESA, USGS initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this seismic survey. NMFS's Office of Protected Resources, Permits, Conservation and Education Division, also initiated formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion (BiOp) evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. In June 2011, NMFS issued a BiOp and concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of the North Pacific right, humpback, sei, fin, blue, and sperm whales, Cook Inlet DPS of

beluga whales, and Steller sea lions. The BiOp also concluded that designated critical habitat for these species does not occur in the action area and would not be affected by the survey. USGS must comply with the Relevant Terms and Conditions of the Incidental Take Statement (ITS) corresponding to NMFS's BiOp issued to both USGS and NMFS's Office of Protected Resources. USGS must also comply with the mitigation and monitoring requirements included in the IHA in order to be exempt under the ITS in the BiOp from the prohibition on take of listed endangered marine mammal species otherwise prohibited by section 9 of the ESA.

#### **NEPA**

With its complete application, USGS provided NMFS an EA analyzing the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL on behalf of USGS, is entitled "Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the central Gulf of Alaska, June 2011." After NMFS reviewed and evaluated the USGS EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Environmental Policy Act, NMFS adopted the USGS EA and issued a Finding of No Significant Impact (FONSI).

#### **Authorization**

NMFS has issued an IHA to USGS for the take, by Level B harassment, of small numbers of marine mammals incidental to conducting a marine geophysical survey in the central GOA, June 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 3, 2011.

#### **Helen M. Golde,**

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

[FR Doc. 2011-14331 Filed 6-8-11; 8:45 am]

**BILLING CODE 3510-22-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**RIN 0648-XA449**

#### **Takes of Marine Mammals Incidental to Specified Activities; 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; 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 United Launch Alliance (ULA), to take marine mammals, by Level B harassment, incidental to conducting *Delta Mariner* operations, cargo unloading activities, and harbor maintenance activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB). **DATES:** Effective June 7, 2011, through June 6, 2012.

**ADDRESSES:** A copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, 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 also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 713-2289.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, 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, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. 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. 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. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to 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 August 4, 2010, from ULA requesting the taking by harassment, of small numbers of marine mammals, incidental to conducting *Delta Mariner* harbor operations for one year. NMFS reviewed

the ULA application and identified a number of issues requiring further clarification. After addressing comments from NMFS, ULA modified its application and submitted a revised application on February 11, 2011. NMFS determined that application complete and adequate on March 29, 2011.

These activities (*i.e.*, transport vessel operations, cargo movement activities, and harbor maintenance dredging) will support Delta IV/EELV launch activities from the Space Launch Complex at VAFB Harbor and would occur in the vicinity of a known pinniped haul out site (Small Haul-out Site #1) located at 34°33.192' N, 120° 36.580' W.

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations and the cargo movement activities, the increased presence of personnel, and harbor maintenance dredging may have the potential to cause California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and Northern elephant seals (*Mirounga angustirostris*) hauled out on Small Haul-out Site #1 to flush into VAFB Harbor or to cause a short-term behavioral disturbance for marine mammals in the area. These types of disturbances are the principal means of marine mammal taking associated with these activities, and ULA has requested an authorization to take 1,075 Pacific harbor seals; 86 California sea lions; and 43 Northern elephant seals by Level B harassment only.

#### Description of the Specified Geographic Region

The activities will take place in or near the VAFB harbor located on the central coast of California at 34° 33' N, 120° 36' W in the northeast Pacific Ocean. The harbor is 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 rookery.

#### Description of the Specified Activity

ULA proposes to conduct Delta IV/EELV activities (transport vessel operations, harbor maintenance dredging, and cargo movement activities) between June 8, 2011, and June 7, 2012.

To date, NMFS has issued eight, 1-year IHAs to ULA for the conduct of the same activities from 2002 to 2010, with the last IHA expiring on September 3, 2010 (74 FR 46742, September 11, 2009).

The Delta IV/EELV launch vehicle is comprised of a common booster core (CBC), an upper stage, and a payload

fairing. The size of the CBC requires it to be transported to the VAFB launch site by a specially designed vessel, the *Delta Mariner*. To allow safe operation of the *Delta Mariner*, maintenance dredging within a harbor located in Zone 6 of the Western Space and Missile Center (WSMC) in the Pacific Ocean (33 CFR 334.1130(a)(2)(vi)), ULA requires that the harbor undergo maintenance on a periodic basis.

#### Delta Mariner Operations

The *Delta Mariner* is a 312-foot (ft) (95.1-meter (m)) long, 84-ft (25.6-m) wide, steel-hulled, ocean-going vessel capable of operating at an 8-ft (2.4-m) draft. It is a roll-on, roll-off, self-propelled ship with an enclosed watertight cargo area, a superstructure forward, and a ramp at the vessel's stern.

*Delta Mariner* off-loading operations and associated cargo movements within the harbor would occur at a maximum frequency of four times per year. The 8,000-horsepower vessel would enter the harbor stern first at 1.5 to 2 knots (1.72 mi per hour (mph)) during daylight hours at high tide, approaching the wharf at less than 0.75 knot (less than one mph). At least one tugboat will always accompany the *Delta Mariner* during visits to the VAFB harbor. Departure will occur under the previously-stated conditions.

#### Harbor Maintenance Activities

ULA must perform maintenance dredging annually or twice per year, depending on the hardware delivery schedule. To accommodate the *Delta Mariner's* draft, ULA would need to remove up to 5,000 cubic yards of sediment per dredging cycle. Dredging would involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Dredge operations, from set-up to tear-down, would continue 24-hours a day for approximately 35 days.

ULA provides a more detailed description of the work proposed for 2011–2012 in the application and the Final U.S. Air Force EA for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001) which are available upon request (see **ADDRESSES**).

#### Cargo Movement Activities

Removal of the CBC from the vessel requires the use of an elevating platform transporter (EPT). The EPT is powered by a diesel engine manufactured by Daimler-Chrysler AG (Mercedes), model OM442A, 340HP. ULA would limit cargo unloading activities to periods of

high tide. It takes approximately two hours to remove the first CBC from the cargo bay and six hours to remove a complement of three CBCs. It would take up to two additional hours to remove remaining cargo which may consist of two upper stages, one set of fairings, and one payload attach fitting. The total of 10 hours includes time required to move the flight hardware to the staging area. Flight hardware items, other than the CBCs, are packaged in containers equipped with retractable casters and tow bars. ULA would tow these containers off the vessel by a standard diesel truck tractor. Noise from the ground support equipment will be muted while inside the cargo bay and will be audible to marine mammals only during the time the equipment is in the harbor area. Cargo movement operations would occur for approximately 43 days (concurrent with the harbor maintenance activities).

NMFS outlined the purpose of the program in the Notice of Proposed IHA (76 FR 21862, April 19, 2011). The activities to be conducted have not changed between the Notice of Proposed IHA (76 FR 21862, April 19, 2011) and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including a discussion of associated noise sources from the harbor operations, NMFS refers the reader to the Notice of Proposed IHA (76 FR 21862, April 19, 2011), the application, and associated documents referenced earlier in this document.

### Comments and Responses

NMFS published a notice of receipt of the ULA application and proposed IHA in the **Federal Register** on April 19, 2011 (76 FR 21862). During the 30-day public comment period, NMFS received two comments from the public and a letter from the Marine Mammal Commission (Commission). Following are the comments from the public commenter and the Commission with NMFS' responses.

*Comment 1:* One commenter opposed the project on the grounds that it would cause injury or mortality to marine mammals.

*Response:* As described in detail in the **Federal Register** notice of the proposed IHA (76 FR 21862, April 19, 2011), no marine mammal would be killed or injured as a result of the operations by ULA. The project would only result in Level B behavioral harassment only of a small number of marine mammals.

*Comment 2:* The commenter believed that NMFS inflated the population estimate for the California sea lion stock

in the Notice of Proposed IHA (76 FR 21862, April 19, 2011).

*Response:* The Notice of Proposed IHA (76 FR 21862, April 19, 2011) states that the estimated population of the U.S. stock of California sea lion ranged from 141,842 to 238,000 animals in 2009. The peer-reviewed source for the estimate is the most recent NMFS Stock Assessment Report (SAR) for California sea lions (Carretta *et al.*, 2010). The SAR is available on the Internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2009.pdf>.

*Comment 3:* The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures and also recommended that in the case of injury or mortality that may have resulted from the proposed activities, NMFS require that ULA suspend its activities until the agency is able to review the circumstances of the take.

*Response:* NMFS has included all of the mitigation and monitoring measures proposed in the Notice of Proposed IHA (76 FR 21862, April 19, 2011). The IHA's reporting requirements direct ULA to report all injured or dead marine mammals (regardless of cause) to NMFS. In the unanticipated event that any taking of a marine mammal in a manner prohibited by the IHA occurs, such as an injury, serious injury, or mortality, and are judged to result from the activities, ULA shall report the incident to NMFS immediately. ULA will postpone the activities until NMFS is able to review the circumstances of the take. NMFS will work with ULA to determine whether modifications to the harbor activities are warranted.

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

The marine mammal species most likely to be harassed incidental to conducting *Delta Mariner* operations, cargo unloading activities, and harbor maintenance activities at VAFB are the California sea lion, the Pacific harbor seal, and the northern elephant seal. California sea lions, Pacific harbor seals, and northern elephant seals are not listed as threatened or endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), nor are they categorized as depleted under the MMPA.

Other cetaceans that have the potential to transit in the vicinity of the VAFB harbor include the short-beaked common dolphin (*Delphinus delphis*), the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the gray whale (*Eschrichtius robustus*). However, these species are rare in the immediate harbor area. NMFS included

a more detailed discussion of the status of these stocks and their occurrence at VAFB in the Notice of Proposed IHA (76 FR 21862, April 19, 2011).

### Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: The use of heavy equipment during the *Delta Mariner* off-loading operations and harbor dredging and the increased presence of personnel may have the potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

The effects of the harbor activities would be limited to short-term startle responses and localized behavioral changes and have the potential to temporarily displace the animals from a haul out site. NMFS would expect the pinnipeds to return to a haulout site within 60 minutes of the disturbance (Allen *et al.*, 1985) and does not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of harbor maintenance and *Delta Mariner* operations.

Finally, no operations would occur on pinniped rookeries; therefore, NMFS does not expect mother and pup separation or crushing of pups to occur. For a more detailed discussion of the sound levels produced by the equipment, behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring, NMFS refers the reader to the Notice of Proposed IHA (76 FR 21862, April 19, 2011), the application, and associated documents.

### Anticipated Effects on Habitat

NMFS does not anticipate that the operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the VAFB harbor, including the food sources they use (*i.e.* fish and invertebrates). NMFS does not anticipate that there would be any physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible which NMFS considered in further detail earlier in this document and the Notice of Proposed IHA (76 FR 21862, April 19, 2011), as behavioral modification.

## Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must 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 the availability of such species or stock for taking for certain subsistence uses.

ULA has based the mitigation measures described herein, to be implemented for the harbor operations, on the following:

(1) Protocols used during previous operations as approved by NMFS; and

(2) Previous IHA applications and IHAs approved and authorized by NMFS.

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA/and or its designees shall implement the following mitigating measures for marine mammals: (1) If activities occur during nighttime hours, ULA will turn on lighting equipment before dusk and the lights shall remain on for the entire night to avoid startling pinnipeds; (2) initiate operations before dusk; (3) keep construction noises at a constant level (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, ULA shall initiate a gradual start-up of activities to ensure a gradual increase in noise levels; (5) a NMFS-qualified marine mammal observer shall 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 shall enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing 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 shall enter the harbor stern first, approaching the wharf and moorings 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.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has 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: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize impacts as planned; and (3) 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 or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

## Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must 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 IHAs 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.

ULA will sponsor a marine mammal monitor during the present project, in order to implement the mitigation measures thus satisfying the monitoring requirements of the IHA. ULA's monitoring activities will consist of:

(1) A NMFS-qualified and VAFB-designated biologically trained observer monitoring the area for pinnipeds during all harbor activities. During nighttime activities, the monitor would use a night vision scope.

(2) Conducting baseline observations of pinnipeds in the project area prior to initiating project activities.

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

(4) 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.

## Reporting

ULA will notify NMFS two weeks prior to initiation of each activity. After the completion of each activity, ULA will submit a draft final monitoring report to NMFS within 120 days to the Director of Office of Protected Resources at NMFS Headquarters. If ULA receives no comments from NMFS on the draft Final Monitoring Report, NMFS would consider the draft Final Monitoring Report to be the Final Monitoring Report.

The final report shall 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 would 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 the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A Harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), ULA shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, at 301–713–2289 and/or by e-mail to

*Michael.Payne@noaa.gov* and *Jeannine.Cody@noaa.gov*, and the Southwest Regional Stranding Coordinators (*Joe.Cordaro@noaa.gov* and *Sarah.Wilkin@noaa.gov*). The report must include the following information: (a) Time, date, and location (latitude/longitude) of the incident; the name and type of vessel involved; the vessel's speed during and leading up to the incident; description of the incident; status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

ULA shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ULA to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA

compliance. ULA may not resume their activities until notified by NMFS via letter or e-mail, or telephone.

In the event that ULA discovers an injured or dead marine mammal, and the NMFS-qualified marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ULA will immediately report the incident to the Chief of the Permits Conservation, and Education Division, Office of Protected Resources, NMFS, and to the NMFS Southwest Stranding Coordinators. The report must include the same information identified in Condition (a). ULA may continue its activities while NMFS reviews the circumstances of the incident. NMFS will work with ULA to determine whether modifications in the activities are appropriate.

In the event that ULA discovers an injured or dead marine mammal, and the NMFS-qualified marine mammal observer determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ULA shall report the incident to the Chief of the Permits Conservation, and Education Division, Office of Protected Resources, NMFS, and to the NMFS Southwest Stranding Coordinators within 24 hours of the discovery. ULA shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

#### **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].

NMFS anticipates take by Level B harassment only as a result of the harbor maintenance and *Delta Mariner* operations in the VAFB harbor. Based on ULA's previous monitoring reports, with the same activities conducted in the operations area NMFS estimates that small numbers of Pacific harbor seals, California sea lions, and northern

elephant seals could be potentially affected by Level B behavioral harassment over the course of the IHA.

For this IHA, NMFS has authorized the take of 1,075 Pacific harbor seals, 86 California sea lions, and 43 northern elephant seals. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area due to wave inundation of the haulout area, NMFS expects no injury, serious injury, or mortality to occur, and no takes by injury or mortality are authorized.

#### **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 a variety of factors, including but not limited to:

- (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.

As mentioned previously, NMFS estimates that three species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than two percent) relative to the population size.

NMFS does not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of ULA's activities, and none are authorized. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed harbor maintenance and *Delta Mariner* operations to avoid the resultant acoustic and visual disturbances. However, NMFS anticipates only short-term behavioral disturbance due to the brief duration of the proposed activities; the availability of alternate areas near the VAFB harbor for pinnipeds to avoid the resultant noise from the maintenance and vessel operations; and that no operations would occur on pinniped rookeries. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival.

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 the impact of conducting harbor maintenance and vessel operations from June, 2011, through June, 2012, will result in the incidental take of small numbers of marine mammals, by Level B behavioral harassment only, and that the total taking from the ULA's activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

#### **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. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

#### **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 ULA's 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 (NEPA)**

In 2001, the USAF prepared an Environmental Assessment (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 (FONSI) on the issuance of an IHA for ULA's 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 activities and impacts for 2011-2012 are within the scope of NMFS' 2005 EA and FONSI. NMFS has again reviewed the 2005 EA and determined that there are no new direct,

indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2005 FONSI. A copy of the EA and the FONSI for this activity is available upon request (see **ADDRESSES**).

#### Authorization

As a result of these determinations, NMFS has issued an IHA to ULA to take marine mammals, by Level B harassment only, incidental to conducting *Delta Mariner* operations, cargo unloading activities, and harbor maintenance activities at south VAFB, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 6, 2011.

#### Helen M. Golde,

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 2011-14335 Filed 6-8-11; 8:45 am]

**BILLING CODE 3510-22-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, June 15, 2011; 10 a.m.–11 a.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

#### Matter To Be Considered

##### *Compliance Status Report*

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-7948.

#### CONTACT PERSON FOR MORE INFORMATION:

Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: June 7, 2011.

#### Todd A Stevenson,

*Secretary.*

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## COUNCIL ON ENVIRONMENTAL QUALITY

### National Ocean Council; Strategic Action Plan Content Outlines

**AGENCY:** Council on Environmental Quality.

**ACTION:** Notice of Availability, Strategic Action Plan Content Outlines; Request for Comments.

**SUMMARY:** On July 19, 2010, President Obama signed Executive Order 13547 establishing a National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes (“National Ocean Policy”). The National Ocean Policy provides an implementation strategy, which describes nine priority objectives that seek to address some of the most pressing challenges facing the ocean, our coasts, and the Great Lakes. The National Ocean Council is responsible for developing strategic action plans for each of the nine priority objectives. As a first step, Federal interagency writing teams have developed content outlines for each draft strategic action plan. The NOC is seeking public review and comment of these content outlines.

The purpose of the draft content outlines (outlines) is to provide the public with an initial view of potential actions that could be taken to further the national priority objectives. As such, they are an interim step toward development of the first full draft of each strategic action plan. In developing the outlines, the writing teams were informed by the comments received during an initial public scoping period that closed on April 29.

Each outline presents in bulleted form potential actions to further the particular priority objective. It describes the reasons for taking the action, expected outcomes and milestones, gaps and needs in science and technology, and the timeframe for completing the action. The outlines also provide an overview of the priority objective, greater context for the strategic action plan in implementing the National Ocean Policy, and an overview of the preparation of the plan.

Public comments received on the outlines will be collated and posted on the NOC Web site. The comments on the outlines will inform the preparation of full draft strategic action plans, which will be released for public review in the fall of 2011, allowing additional opportunity for the public to provide comments. Final strategic action plans are expected to be completed by early 2012.

**DATES:** Comments should be submitted on or before July 2, 2011.

**ADDRESSES:** Content outlines can be downloaded here: <http://www.whitehouse.gov/administration/eop/oceans>. Comments should be submitted electronically at <http://www.WhiteHouse.gov/administration/eop/oceans/comment> or can be sent by mail to: National Ocean Council, 722 Jackson Place, NW., Washington, DC 20503. Comments and input may also be provided in person by participating in regional listening sessions that will be convened throughout the U.S. in the month of June. You can learn more about these regional listening sessions by visiting <http://www.WhiteHouse.gov/oceans>.

#### FOR FURTHER INFORMATION CONTACT:

Michael Weiss, Deputy Associate Director for Ocean and Coastal Policy, at (202) 456-3892.

**SUPPLEMENTARY INFORMATION:** On July 19, 2010, President Obama signed Executive Order 13547 establishing a National Policy for the Stewardship of the Ocean, our Coasts, and the Great Lakes (“National Ocean Policy”). That Executive Order adopts the Final Recommendations of the Interagency Ocean Policy Task Force and directs Federal agencies to take the appropriate steps to implement them. The Executive Order creates an interagency National Ocean Council (NOC) to strengthen ocean governance and coordination, identifies nine priority actions for the NOC to pursue, and adopts a flexible framework for effective coastal and marine spatial planning to address conservation, economic activity, user conflict, and sustainable use of the ocean, our coasts, and the Great Lakes.

The National Ocean Policy provides a comprehensive approach, based on science and technology, to uphold our stewardship responsibilities and ensure accountability for our actions to present and future generations. The Obama Administration intends, through the National Ocean Policy, to provide a model of balanced, productive, efficient, sustainable, and informed ocean, coastal, and Great Lakes use, management, and conservation. The Final Recommendations provide an implementation strategy that describes a clear set of priority objectives that our Nation should pursue to further the National Policy.

The nine priority objectives seek to address some of the most pressing challenges facing the ocean, our coasts, and the Great Lakes. The nine priority objectives are identified below. Additional information about each priority may be found at <http://www.WhiteHouse.gov/oceans>.