

Dated: October 3, 2012.

**Andy Baldus,**

Acting Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

RIN 0648-XA969

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Abalone Research on San Nicolas Island, 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 regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to Dr. Glenn R. VanBlaricom (VanBlaricom) to incidentally harass, by Level B harassment only, several species of marine mammal incidental to abalone research surveys on San Nicolas Island (SNI).

**DATES:** This authorization is effective for a period of 1 year from the date of issuance.

**ADDRESSES:** A copy of the IHA and related documents may be obtained by visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Associated documents prepared pursuant to the National Environmental Policy Act (NEPA) are also available at the same site. For those members of the public unable to view these documents on the internet, a copy may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**). Documents may also be viewed, by appointment only, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

**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 part 216 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**

On October 26, 2011, NMFS received a complete application from VanBlaricom for the taking, by Level B harassment only, of marine mammals incidental to research surveys

investigating the black abalone (*Haliotis cracherodii*). The first of five IHAs for similar research activities was issued to VanBlaricom on September 23, 2003 (68 FR 57427; October 3, 2003); the most recent of these was issued on January 18, 2008 (73 FR 4841; January 28, 2008), expiring January 17, 2009.

Authorization for incidental take, by Level B harassment only, was requested for small numbers of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*). The take is expected to occur incidental to research surveys performed for the purpose of assessing trends in black abalone populations over time in permanent study sites, and to conduct related research on the biology and ecology of black abalones relevant to current conservation concerns for the species, at San Nicolas Island (SNI), Ventura County, California. The specified activity consists of researchers on foot counting black abalones in plots along established transect lines at each of nine permanent study sites. Visits are generally made to each site on SNI up to four times per year in order to complete standardized annual black abalone surveys. VanBlaricom plans to conduct additional studies of growth and mortality rates, as well as genetic studies, necessitating as many as five visits per year to certain sites.

**Description of the Specified Activity**

Long-term study of abalone population trends began in 1979 due to interest in relocation of southern sea otters (*Enhydra lutris nereis*) to SNI. Following two seasons of reconnaissance surveys (1979-80), quantitative survey effort started in 1981, when nine permanent research sites in rocky intertidal habitats were chosen based on the presence of relatively dense abalone aggregations in order to monitor changes over time. From September 1979 through October 2011, VanBlaricom has made 137 separate field trips to SNI, with a total of 723 days of survey work. The specified activity and specific geographic region were described in greater detail in the **Federal Register** notice of proposed authorization (hereafter, the FR notice; 77 FR 12246; February 29, 2012) and will not be repeated here.

Research is conducted by counting black abalone in plots along permanent transect lines in rocky intertidal habitats at each of the nine study sites (see Figure 1 of VanBlaricom's application for a map of the study sites). Survey work is typically done by two field biologists working on foot (sites are

accessed by hiking to the shoreline from a vehicle parked inland), and is conducted only at low tide. Variation in surf height and sea conditions can influence the safety of field biologists as well as the quality of data collected, so specific timing of site visits is difficult to predict, although work is typically conducted between October and February. All work is done during daylight hours.

Marine mammals likely to be affected by abalone research activity are those that are hauled out on land near study sites. Past experience has shown that those animals disturbed by researchers may flush into the water, or move some distance away from the researchers without flushing into the water. Variable numbers of California sea lions, harbor seals, and elephant seals typically haul out near six of the nine study sites, and rarely near a seventh. Thus, of the nine study sites used for the abalone surveys, only two may currently be approached without the possibility of disturbing at least one species of pinniped. Breeding activity of the three relatively common pinniped species occurs at five of the nine sites. Periods of breeding and lactation for California sea lions and harbor seals occur from approximately February 15 through October 15, while elephant seal pups are born, nursed, and weaned from approximately January through March, with pups departing for foraging areas at sea at about 30 days post-weaning.

Annual black abalone surveys typically require that each of the nine permanent sites be visited between one and three times per year. As a result of additional studies planned for SNI, one site would be visited five times per year, and two additional sites would be visited four times each. Each visit to a given study site generally takes no more than 4 hours, after which the site is vacated and can be re-occupied by any marine mammals that were disturbed by the presence of researchers. One annual visit to each site is typically for maintenance purposes, is conducted in a month when pinnipeds are absent or are present in reduced numbers, and takes approximately 30 minutes.

#### Comments and Responses

We published a notice of receipt of the application and proposal for an IHA in the **Federal Register** on February 29, 2012 (77 FR 12246). We received comments from the Marine Mammal Commission, which recommended that we issue the requested incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures. All proposed

mitigation and monitoring measures are included in the issued authorization.

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

Many of the beaches in the Channel Islands provide resting, molting or breeding places for pinnipeds. On SNI, three pinniped species (northern elephant seal, harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition to the three species commonly encountered at SNI, Guadalupe fur seals (*Arctocephalus townsendi*), listed as threatened under the ESA, and sea otters are known to occur. A single adult male Guadalupe fur seal was seen at one abalone research site on two occasions during the summer months in the mid-1980s. However, none have been seen since that time. Due to the rarity of Guadalupe fur seal sightings during abalone research at SNI, and because of mitigation measures described later in this document (see Mitigation section of this document), no take of Guadalupe fur seals is anticipated or authorized. While sea otters are not typically sighted during the abalone survey work, a 2011 population survey indicated that sea otters at SNI number approximately 50 individuals. However, sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service and are not discussed further here.

The FR notice of proposed IHA (77 FR 12246; February 29, 2012) summarizes the population status and abundance of these species and provides detailed life history information. Further information on the biology and distribution of these species and others in the region can be found in the FR notice or in NMFS' Marine Mammal Stock Assessment Reports, which are available online at <http://www.nmfs.noaa.gov/pr/sars/>.

#### Potential Effects of the Specified Activity on Marine Mammals

Variable numbers of California sea lions, harbor seals, and elephant seals, depending on the time of year and the specific site, typically haul out near six of the nine study sites used for abalone research, and rarely near a seventh, with breeding activity occurring at five of the nine sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites.

Incidental harassment may result if hauled out animals are disturbed by the presence of abalone researchers. Although marine mammals are never deliberately approached by abalone

survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent abalone study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. We do not consider the alerting reactions to constitute behavioral harassment, or Level B harassment takes, but rather assume that pinnipeds that move greater than 1 m or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B harassment taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season (i.e., October to March), the researchers will make 4–6 visits to SNI, although each site is not visited during every visit to SNI. Visits to each site are thus separated by a matter of weeks, within the season, and are typically not visited at all during the summer months. Each site visit typically lasts no more than 4 hours. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts. The FR notice of proposed IHA (77 FR 12246; February 29, 2012) provides a more detailed description of the potential effects of these activities on marine mammals.

#### Anticipated Effects on Habitat

We do not anticipate any detrimental effects to marine mammal habitat as a result of the specified activities, beyond rendering the areas immediately around each of the nine study sites less desirable as haul-out sites for a matter of hours per year.

### Summary of Previous Monitoring

VanBlaricom has complied with the mitigation and monitoring required under previous authorizations. During the course of these activities, VanBlaricom has not exceeded the take levels authorized. A full summary of previous monitoring may be found in the FR notice (77 FR 12246; February 29, 2012).

### 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).

Several mitigation measures will be implemented as part of the SNI abalone research activities in order to reduce the potential for harassment and the intensity of any harassment that does occur. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon any unavoidable approach. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. Each visit to a given study site will last for approximately 4 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of abalone researchers.

In addition, potential disturbances to females with dependent pups (in the cases of California sea lions and harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to sites with pinnipeds present from March–September, during periods of breeding and lactation for those species. During this period, abalone research will either not occur or will be confined to those sites (2, 3, 4, and 9) where pinniped breeding and post-partum nursing does not occur. Limiting visits to the breeding and lactation sites to periods when these activities do not

occur (October–February) will reduce the possibility of incidental harassment and disruption of reproductive behavior and the potential for injury, serious injury, or mortality of dependent California sea lion pups and harbor seal pups to near zero.

Northern elephant seal pups are present at four sites (5–8) during winter months. Risks of injury or mortality of elephant seal pups by mother/pup separation or trampling are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Also, elephant seal pupping typically occurs on the sandy beaches at SNI, approximately 50 m or more away from the abalone study sites. Possible take of northern elephant seal pups will be minimized, as for other species, by using a very careful approach to the study sites and avoiding the proximity of hauled-out seals and any seal pups during collection of abalone population data. As described previously, elephant seals show very low sensitivity to the presence of researchers, and no juvenile elephant seal was harassed during the December 2005–January 2009 period.

One individual Guadalupe fur seal was seen on two separate occasions during the summer months in the mid-1980s. Since the original sightings, no individuals of this species have been seen during abalone research. However, to ensure that Guadalupe fur seals are not affected by these activities, work will be immediately suspended if an individual is seen. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any possibility of disturbance.

We have carefully evaluated the applicant's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribe 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 adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including

consideration of personnel safety and practicality of implementation.

Based on our evaluation of the mitigation measures, we have determined that these 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 would 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.

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy (Navy). The Navy owns SNI and closely regulates all civilian access to, and activity on, the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI. In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center (SWFSC). Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Information recorded will include species counts (with numbers of pups/juveniles), numbers of observed disturbances, and descriptions of the disturbance behaviors during the abalone surveys. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, SWFSC, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD and SWFSC.

If at any time serious injury or mortality of the species for which take is authorized should occur, or if harassment of any other marine mammal occurs, and such action may be a result of the specified abalone research, VanBlaricom will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

#### **Estimated Take by Incidental Harassment**

With respect to the activities described 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, breaching, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The planned mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. The distribution of pinnipeds hauled out on beaches is not uniform between sites or at different times of the year. The number of marine mammals disturbed may vary by month and location, and it is likely that only those animals hauled out closest to the actual survey transect plots contained within each research site would be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way. VanBlaricom plans to visit site 8 five times, sites 5 and 7 four times each, and sites 1, 4, 6, and 9 two times each. No marine mammals have been observed at sites 2 and 3, and unlimited visits are allowed to those sites.

We consider an animal to have been harassed if it moved greater than 1 m in

response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that become alert without such movements are not considered harassed. Estimated potential incidental take is based on the number of visits proposed for each site, the maximum number of animals observed at each site (October–February), and the observed susceptibility to harassment for each species (see FR notice; 77 FR 12246; February 29, 2012). We conservatively estimate that the maximum total possible numbers of individuals that may be incidentally harassed as a result of the planned activity would be 3,340 California sea lions, 212 harbor seals, and nine northern elephant seals (each constituting less than 2 percent of the relevant populations).

#### **Negligible Impact and Small Numbers Analysis and Preliminary 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, we consider 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, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Based on VanBlaricom's application and monitoring reports for previous field seasons, as well as the analysis contained herein, we have determined that the impact of the described abalone research at SNI will result, at most, in a temporary modification in behavior for small numbers of California sea lions, harbor seals, and northern elephant seals, in the form of movement away from the researchers and/or flushing from the beach. The numbers of authorized take for each of the three species are considered small relative to the relevant stocks or populations (each less than 2 percent). In addition, no take by injury, serious injury or mortality is anticipated or authorized, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document. We have determined that the anticipated takes will not have an adverse on annual rates of recruitment or survival for these species or stocks,

and therefore will have a negligible impact on the affected species or stocks.

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

No subsistence uses of marine mammals are implicated by this action.

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

The described abalone research and issuance of the accompanying IHA will not affect ESA-listed marine mammal species or critical habitat under NMFS' jurisdiction.

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

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, we prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the issuance of IHAs to VanBlaricom. NMFS signed a Finding of No Significant Impact on November 21, 2005. We have reviewed the application and previous monitoring reports and determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, we have determined that a new or supplemental EA or Environmental Impact Statement is unnecessary. We received no public comments or new information in response to this notice that would affect that determination. The 2005 EA referenced above is available for review at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. We hereby reaffirm the 2005 FONSI.

#### **Authorization**

As a result of these determinations, we have issued an IHA to VanBlaricom to conduct the described activities for a period of one year, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 3, 2012.

**Helen M. Golde,**

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

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