

Scallop Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, September 23, 2020 at 8:30 a.m.

**ADDRESSES:** All meeting participants and interested parties can register to join the webinar at <https://attendeegotowebinar.com/register/9134937625686223119>.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Scallop Advisory Panel will discuss Amendment 21, specifically, review of public comments and select final preferred alternatives. Amendment 21 includes measures related to: (1) Management of the Northern Gulf of Maine (NGOM) Management Area, (2) Limited Access General Category (LAGC) individual fishing quota (IFQ) possession limits, and (3) ability of Limited Access vessels with LAGC IFQ to transfer quota to LAGC IFQ only vessels. The panel will also discuss 2021/22 Specifications: Discuss the timing and outlook for 2020 surveys and 2021/22 specifications process. They also plan to review 2021 Priorities: Discuss and rank potential 2021 scallop work priorities. Other business may be discussed, as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date. Consistent with 16

U.S.C. 1852, a copy of the recording is available upon request.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 3, 2020.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XA439]

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Aleutian Islands**

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

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

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Lamont-Doherty Earth Observatory of Columbia University (L-DEO) to incidentally harass marine mammals during a marine geophysical survey in the Aleutian Islands, Alaska.

**DATES:** The authorization is effective for a period of one year, from September 1, 2020, through August 31, 2021.

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

**SUPPLEMENTARY INFORMATION:**

**Availability**

Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: [www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2](http://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2). In case of problems accessing these documents, please call the contact listed above.

**Background**

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) 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 incidental take authorization may be 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) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**Summary of Request**

On March 27, 2020, NMFS received a request from L-DEO for an IHA to take marine mammals incidental to a marine geophysical survey along and across the Aleutian Andreanof Arc in Alaska. L-DEO submitted a revised version of the application, which was deemed adequate and complete, on June 25, 2020. NMFS published a proposed IHA for public review and comment on July 28, 2020 (85 FR 45389). NMFS has authorized take of 24 species of marine mammals by harassment. For seven of these species, taking by Level A and Level B harassment is authorized, with only Level B harassment authorized for the remaining 17 species.

**Description of Proposed Activity**

*Overview*

Researchers from L-DEO and Woods Hole Oceanographic Institution (WHOI), with funding from the National Science Foundation (NSF), proposed to conduct a high-energy seismic survey from the Research Vessel (R/V) *Marcus G. Langseth (Langseth)* along and across the Aleutian Andreanof Arc in Alaska during September-October 2020. The two-dimensional (2-D) seismic survey will occur within the Exclusive

Economic Zone (EEZ) of the United States. The survey will use a 36-airgun towed array with a total discharge volume of ~6,600 cubic inches (in<sup>3</sup>) (108,155 cm<sup>3</sup>) as an acoustic source, acquiring return signals using both a towed streamer as well as ocean bottom seismometers (OBSs).

The study will use 2-D seismic surveying to seismically image the structure of the crust along and across the Andreanof segment of the Aleutian Arc, an intact arc segment with a simple and well known history. Existing geochemical analyses of igneous rocks from this segment suggest an along-segment trend in crustal-scale fractionation processes. Seismic velocity provides strong constraints on bulk composition, and so seismic images will reveal the constructional architecture, vertical fractionation patterns, and along-arc trends in both of those things. Together with existing observations from surface rocks (e.g., bulk composition, volatile content) and forcing parameters (e.g., slab geometry, sediment input, deformation-inferred stress regime), hypotheses related to controls on oceanic-arc crustal construction and fractionation can be tested and refined.

#### *Dates and Duration*

The survey is expected to last for approximately 48 days, including approximately 16 days of seismic operations, 19 days of equipment deployment/retrieval, and 8 days of transits, and 5 contingency days (accounting for potential delays due to, e.g., weather). R/V *Langseth* will likely leave out of and return to port in Dutch Harbor, Alaska, during September-October 2020.

#### *Specific Geographic Region*

The survey will occur within the area of approximately 49–53.5° N and approximately 172.5–179° W. Representative survey tracklines are shown in Figure 1, available online at: [www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2](http://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2). Tracklines in the vicinity of specific Steller sea lion haul-outs and rookeries are designed to ensure that the area assumed to be ensouffied above the Level B harassment threshold (see Estimated Take section) does not extend beyond a 3,000 ft (0.9 kilometers (km)) buffer around those areas. In addition, the survey vessel will not physically travel within 3 nautical miles (nmi) (5.5 km) of listed Steller sea lion rookeries. Some deviation in actual track lines, including the order of survey operations, could be

necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. The survey will occur within the EEZ of the United States, including Alaskan state waters, ranging in depth from 35–7,100 meters (m). Approximately 3,224 km of transect lines will be surveyed. Most of the survey (73 percent) would occur in deep water ( $\leq 1,000$  m), 26 percent would occur in intermediate water (100–1,000 m deep), and approximately 1 percent would take place in shallow water <100 m deep.

#### *Detailed Description of Specific Activity*

The procedures to be used for the survey would be similar to those used during previous seismic surveys by L-DEO and involve conventional seismic methodology. The survey will involve one source vessel, R/V *Langseth*, which is owned by NSF and operated on its behalf by L-DEO. R/V *Langseth* will deploy an array of 36 airguns as an energy source with a total volume of 6,600 in<sup>3</sup>. The array consists of 36 elements, including 20 Bolt 1500LL airguns with volumes of 180 to 360 in<sup>3</sup> (2,950–5,800 cm<sup>3</sup>) and 16 Bolt 1900LLX airguns with volumes of 40 to 120 in<sup>3</sup> (655–1,966 cm<sup>3</sup>). The airgun array configuration is illustrated in Figure 2–11 of NSF and USGS's Programmatic Environmental Impact Statement (PEIS; NSF-USGS, 2011). (The PEIS is available online at: [www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis-with-appendices.pdf](http://www.nsf.gov/geo/oce/envcomp/usgs-nsf-marine-seismic-research/nsf-usgs-final-eis-oeis-with-appendices.pdf)). The vessel speed during seismic operations will be approximately 4.5 knots (~8.3 km/hour) during the survey and the airgun array will be towed at a depth of 9 m. The receiving system consists of OBSs and a towed hydrophone streamer with a nominal length of 8 km. As the airguns are towed along the survey lines, the hydrophone streamer transfers the data to the on-board processing system, and the OBSs receive and store the returning acoustic signals internally for later analysis.

The study consists of one east-west strike-line transect (~540 km), two north-south dip-line transects (~420 km and ~285 km), connecting multi-channel seismic (MCS) transects (~480 km), and an MCS survey of the Amlia Fracture Zone (~285 km). (See Figure 1, available online.) The representative tracklines have a total length of 2,010 km. The strike- and dip-line transects will first be acquired using OBSs, which will be deployed along one line at a time, the line will be surveyed, and the OBSs will then be recovered, before moving onto the next line. After all refraction data is

acquired, the strike and dip lines will be acquired a second time using MCS. The MCS transect lines and Amlia Fracture Zone transect lines will be acquired only once using MCS. Thus, the line km to be acquired during the entire survey is expected to be approximately 3,255 km. There could be additional seismic operations associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard, and 25 percent has been added to the assumed survey line-kilometers to account for this potential.

For the majority of the survey (90 percent), R/V *Langseth* will tow the full array, consisting of four strings with 36 airguns (plus 4 spares) with a total discharge volume of 6,600 in<sup>3</sup>. In certain locations (see Figure 1) closest to islands, only half the array (18 airguns) would be operated, with a total volume of approximately 3,300 in<sup>3</sup> (54,077 cm<sup>3</sup>). The airguns would fire at a shot interval of 22 seconds (s) during MCS shooting with the hydrophone streamer and at a 120-s interval during refraction surveying to OBSs.

The seismometers consist of short-period multi-component OBSs from Scripps Institution of Oceanography (SIO). Fifty OBSs will be deployed and subsequently retrieved by R/V *Langseth* prior to MCS surveying. When an OBS is ready to be retrieved, an acoustic release transponder (pinger) interrogates the instrument at a frequency of 12 kiloHertz (kHz); a response is received at the same frequency. The burn-wire release assembly is then activated, and the instrument is released from its 36-kilogram iron grate anchor to float to the surface. Take of marine mammals is not expected to occur incidental to L-DEO's use of OBSs.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP) will be operated from R/V *Langseth* continuously during the seismic surveys, but not during transit to and from the survey area. Take of marine mammals is not expected to occur incidental to use of the MBES, SBP, or ADCP because they will be operated only during seismic acquisition, and it is assumed that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, given their characteristics (e.g., narrow downward-directed beam), marine mammals would experience no more than one or two

brief ping exposures, if any exposure were to occur. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

### Comments and Responses

A notice of proposed IHA was published in the **Federal Register** on July 28, 2020 (85 FR 45389). During the 30-day public comment period, NMFS received a letter from the Marine Mammal Commission (Commission). Please see the Commission's letter for full details regarding their recommendations and rationale. The letter is available online at: [www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2](http://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2). A summary of the Commission's recommendations as well as NMFS' responses is below.

*Comment*—Noting certain inconsistencies and errors in information provided in L-DEO's application and NMFS' **Federal Register** notice, the Commission recommends that NMFS (1) determine what the percentages of the survey tracklines in the three depth strata should be, (2) ensure that the same percentages of survey tracklines are used for Level A and B harassment in each of the three depth strata, (3) re-estimate the numbers of Level A and B harassment takes accordingly, and (4) ensure that the total takes of low-frequency and high-frequency cetaceans and Level B harassment takes of mid-frequency cetaceans, otariids, and phocids are based on the Level A and B harassment takes added together.

*Response*—As noted in the Commission's letter, L-DEO provided revised tables C-1 and D-1, which corrected various minor errors described in the Commission's letter. Of greater substance, L-DEO also revised the estimated take numbers to reflect the movement of certain tracklines to minimize impacts on areas of importance to Steller sea lions and sea otters, as described above (see Changes from the Proposed IHA below for additional discussion). Correct values representing the proportion of trackline in each depth stratum and associated size of ensonified area were used in calculating the estimated takes, and the total takes authorized represent the sum of estimated instances of Level A harassment and Level B harassment, as recommended by the Commission. NMFS does note that the supposed "discrepancies" referenced by the Commission regarding percentages of survey trackline in each depth stratum

appear instead to be a misunderstanding about what these values represent. The values referenced by the Commission from revised Table C-1 are not percentages of survey trackline, but rather percentages of ensonified area in each depth stratum. Due to the large size of the estimated Level B harassment ensonified areas relative to the estimated Level A harassment ensonified areas, the percentages of ensonified area within each depth stratum will be different. Because the Level A harassment ensonified areas are all generally small, the percentages of ensonified area per depth stratum are essentially the same as the percentages of trackline per depth stratum.

*Comment*—Describing what it believes to be the best available information regarding Steller sea lion occurrence in the survey area, the Commission recommends that NMFS ensure that the number of Level B harassment takes of Steller sea lions are correct based on a revised density of 0.0392 sea lions/km<sup>2</sup> in shallow- and intermediate-water depths and the same revised percentages of survey tracklines for Level A and B harassment in each of the three depth strata.

*Response*—NMFS concurs with the Commission's recommendation and has adopted it. Estimated takes of Steller sea lion have been revised in part through incorporation of the recommended density values.

*Comment*—The Commission recommends that NMFS adjust the marine mammal density estimates used in estimating potential takes using either coefficients of variation (CVs) or standard deviations for L-DEO's proposed survey, and reiterates a previous recommendation that NMFS develop a policy and consistent approach for how L-DEO and other NSF-affiliated entities should incorporate uncertainty in density estimates that have been extrapolated from other areas or during other times of the years or when the data themselves include high uncertainty.

*Response*—NMFS does not concur with the Commission's recommendation and does not adopt it. As noted by the Commission, it has previously provided this same recommendation. NMFS has previously expressed its disagreement with the recommendation, which we reiterate here.

The Commission states that "[u]sing only the mean densities would likely result in an underestimation of takes due to the CVs being so much greater than the mean estimates." A CV simply shows the extent of variability in relation to the mean of the population, but does not indicate in which direction

relative to the mean a true outcome will lie. The Commission does not explain why use of the mean densities would result in an underestimate of takes versus an overestimate of takes and, in fact, both outcomes should be considered equally likely. Therefore, the Commission's suggested approach of increasing the density estimate through, e.g., use of the mean plus the CV, would be unnecessarily precautionary. NMFS' implementing regulations state that NMFS should rely on the best scientific evidence available in making findings of negligible impact and no unmitigable adverse impact. There is no requirement in the MMPA or NMFS' implementing regulations to introduce unwarranted precaution into the analyses. While NMFS acknowledges that there is uncertainty associated with any density estimate, the take estimate methodology used here produces the most appropriate estimate of potential takes.

NMFS indicated in its previous response to this comment that it is open to consideration of specific correction factors for use for specific circumstances or species in future IHAs and to further discussion with the Commission. However, it appears that the Commission misunderstood this comment as a commitment to take action. The Commission states in its letter that "[i]t has been more than a year and NMFS has not contacted the Commission regarding this matter" and that "NMFS has yet to advance the issue." NMFS does not believe that it needs to develop a policy regarding this issue and, therefore, NMFS does not intend to contact the Commission or take steps to advance an issue that it does not believe requires action. However, NMFS reiterates its willingness to discuss the issue with the Commission in greater detail.

*Comment*—Noting its disagreement with L-DEO's approach to estimating the size of various ensonified areas, the Commission recommends that NMFS require L-DEO to either (1) re-estimate the proposed Level A and B harassment zones and associated takes of marine mammals using (a) both operational and site-specific environmental parameters, (b) what the Commission believes to be a comprehensive source model and (c) what the Commission believes to be an appropriate sound propagation model for the proposed IHA or (2) collect or provide the relevant acoustic data to substantiate that its modeling approach is conservative for both deep- and intermediate-water depths beyond the Gulf of Mexico. In addition, the Commission recommends that NMFS (1) explain why sound channels with downward refraction, as well as seafloor

reflections, are not likely to occur during the geophysical survey, (2) specify the degree to which both of those parameters would affect the estimation (or underestimation) of Level B harassment zones in deep- and intermediate-water depths, (3) explain why L-DEO's model and other modeling approaches provide more accurate, realistic, and appropriate Level A and B harassment zones than BELLHOP (a different propagation model favored by the Commission), particularly for deep- and intermediate-water depths, and (4) explain why, if L-DEO's model and other modeling approaches are considered best available science, other action proponents that conduct seismic surveys are not implementing similar methods, particularly given their simplicity.

*Response*—As noted by the Commission, these comments reflect a longstanding disagreement between NMFS and the Commission regarding L-DEO's approach to modeling the output of their airgun array and its propagation through the water column. NMFS has previously responded to similar Commission comments on L-DEO's modeling approach. We refer the reader to previous **Federal Register** notices providing responses rather than repeat them here (*e.g.*, 84 FR 60059, November 07, 2019; 84 FR 54849, October 11, 2019; 84 FR 35073, July 22, 2019). Regardless of the addition of slightly different points or modifications to the language with which the Commission expresses these points, the gist of the Commission's disagreement with L-DEO's modeling approach remains the same. NMFS believes that its prior responses have adequately explained the rationale for not following the Commission's recommendations and, importantly, why L-DEO's modeling approach is adequate. NMFS will, however, provide an additional detailed explanation of the reasons why the Commission's recommendations regarding this matter are not followed within 120 days, as suggested by the Commission and required by section 202 of the MMPA.

*Comment*—The Commission recommends that NMFS require L-DEO to (1) analyze the data recorded on the OBSs to determine the extents of the Level B harassment zones in shallow-, intermediate-, and deep-water depths and specify how the in-situ zones compare to the Level B harassment zones specified in the final authorization, (2) justify why it did not use the maximum radii as its Level B harassment zones in deep water for both the 36- and 18-airgun array as it did for

intermediate and shallow water, and (3) if the justification is inconsistent with the approach taken for intermediate and shallow water, revise the Level B harassment zones in deep water based on the maximum radii and re-estimate the numbers of takes accordingly.

*Response*—Regarding the Commission's recommendation to conduct analysis of OBS data, L-DEO has not previously undertaken the type of analysis suggested by the Commission, and indicated to NMFS that it does not have the expertise or capability to do so at this time. In addition, we note that the Commission's recommendation is vague; detailed direction would be needed from the Commission on how to accomplish the recommended effort. This would need to include agreement on the analytical approach in order to meet expectations and to ensure acceptance of results. The Commission's recommendation does not acknowledge the time it would take to perform the analysis or the level of effort and cost that would be involved, *e.g.*, experts needed to obtain and review data, perform detailed comparative analysis, preparation of a report. Based on these concerns, NMFS believes that the recommendation is not practicable.

Also, implementation of this recommendation would not provide any additional conservation value (*e.g.*, improvement in mitigation effectiveness) for the proposed survey. The analysis would be retrospective and could be used to help inform analysis of future surveys in the same area. However, there are no NSF-proposed seismic surveys on the R/V *Langseth* for this region in the foreseeable future.

The Commission also recommended that NMFS require L-DEO to justify why it did not use the maximum radii as its Level B harassment zones in deep water. L-DEO used the maximum deep-water radii to estimate the scaling factors discussed by the Commission, as the isopleths are not spherical. The highest scaling factor (2.08) is obtained for the maximum radii and when scaling to account for differences in towed depths and/or volumes between sources, L-DEO uses the highest scaling factor to be conservative. However, the maximum deep-water radii are not used for defining the Level B harassment zones in deep water, but rather the radii at 2,000 m depth.

The maximum radii for the 6,600 and 3,300 in<sup>3</sup> arrays are at depths of 10,129 m and 4,700 m, depths that are well below where marine mammals would be encountered. Given the sound propagation loss in water, the maximum radii would thus not be appropriate to

define the Level B harassment zones. L-DEO uses the radius at a 2,000 m depth, as this is approximately the maximum relevant water depth for marine mammals. The maximum radii were used for both intermediate and shallow water as the water depth for these depth strata is less than 2,000 m.

In light of this justification, NMFS determined that revising the Level B harassment zones in deep water based on the maximum radii is not appropriate, and therefore, re-estimating the numbers of takes is not warranted.

*Comment*—The Commission recommends that NMFS include in the final authorization a requirement to use a method believed by the Commission to be appropriate for estimating the numbers of marine mammals taken, *e.g.*, by applying relevant corrections to account for animals that are not detected.

*Response*—NMFS appreciates the Commission's development of a recommended approach to better estimate the numbers of marine mammals that may have been taken during geophysical survey activities, including marine mammals that were not detected. The "Commission's method" (see the Commission's letter for additional discussion and citation to a full description provided in an addendum to a 2019 Commission comment letter) involves correction of marine mammal sightings data through use of proxies for marine mammal detectability ( $f(0)$ ) and platform/observer bias on marine mammal detection ( $g(0)$ ), and extrapolation of corrected marine mammal sightings data based on the assumed extent of the Level B harassment zones.

However, NMFS does not concur with the recommendation to require L-DEO to implement this approach because we do not have confidence in the reliability of estimates of potential marine mammal take that would result from use of the approach. The Commission does not address the multiple assumptions that must be made in order to have confidence in the estimates that would be produced through application of the method. For example, the assumption that the application of proxy values for  $g(0)$  and  $f(0)$  is appropriate is not justified (including application of  $f(0)$  values to species for which no value is available and assuming that application of  $f(0)$  to species in a wholly different region is appropriate). Notably,  $g(0)$  values are typically derived on a platform-specific basis, and even for specific observers—not generalized across platforms, as the Commission's method would require.

Separately, the appropriate application of distance sampling methods requires that certain assumptions are valid, and the Commission does not explain why these assumptions should be assumed to be valid during a seismic survey, as compared with typical line-transect surveys operating without an active acoustic source. For example, a key underlying concept of distance sampling methodology is that the probability of detecting an animal decreases as its distance from the observer increases. This cannot be assumed true during an active seismic survey. NMFS believes it unlikely that the numerous assumptions inherent to application of the Commission's method would be accepted in a research context (where distance sampling approaches are typically applied).

Furthermore, the area over which observations are to be extrapolated through the Commission's method is a modeled ensonified area. We do not believe it appropriate to assume a modeled ensonified area is always accurate for purposes of estimating total take. In purporting to estimate total takes, the method ignores the fact that marine mammals exposed to a level of received sound assumed to cause take for analytical purposes may not in fact respond behaviorally in a way that equates to take, especially at great distance from the source.

NMFS believes it is important to focus on collection and reporting of empirical data that can directly inform an assessment of the effects of a specified activity on the affected species or stock. While there may be value in an assessment of potential unobserved take, we need to proceed cautiously in the development of derived values given our low confidence in multiple inputs. NMFS is currently more broadly evaluating monitoring requirements, including data collection, interpretation, and reporting, as well as the specific issue the Commission has raised, and is committed to developing improved approaches.

*Comment*—The Commission recommends that NMFS require L-DEO to specify in the final monitoring report (1) the number of days on which the array was active and (2) the percentage of time and total time the array was active during daylight versus nighttime hours (including dawn and dusk), and further recommends that NMFS require L-DEO to include in its monitoring report all data to be collected under section 5(d)(ii), (iii), and (iv) through specific stipulations in section 6(a) of the final authorization.

*Response*—NMFS concurs with the recommendation and has included these requirements in the IHA.

*Comment*—The Commission asserts that L-DEO and other NSF-affiliated entities have not complied with all of the requirements set forth in certain final IHAs, and recommends that, should the alleged shortcomings occur again, NMFS refrain from issuing any further authorizations to L-DEO and other NSF-affiliated entities until such time that the monitoring reports include all of the required information.

*Response*—NMFS appreciates the Commission's concern but will consider any future requests for incidental take authorization from NSF-affiliated entities according to the requirements of the MMPA.

*Comment*—The Commission asserts that “only one of the last six monitoring reports involving geophysical surveys conducted by L-DEO and other NSF-affiliated entities has been posted on NMFS' website,” and recommends that NMFS post all final monitoring reports on its website as soon as they are available.

*Response*—NMFS concurs with the Commission's recommendation and it is our practice to post all final monitoring reports on its website as soon as they are available. All available monitoring reports involving geophysical surveys conducted by L-DEO and other NSF-affiliated entities are currently available on NMFS' website. We note that reports are not yet available for the three most recent IHAs issued for these activities.

*Comment*—The Commission recommends that NMFS include in all draft and final IHAs the explicit requirements to cease activities if a marine mammal is injured or killed during the specified activities, including by vessel strike, until NMFS reviews the circumstances involving any injury or death that is likely attributable to the activities and determines what additional measures are necessary to minimize additional injuries or deaths.

*Response*—NMFS does not expect that the proposed activities have the potential to result in injury or mortality to marine mammals and therefore does not agree that a blanket requirement for project activities to cease would be warranted. NMFS does not agree that a requirement for a vessel that is operating on the open water to suddenly stop operating is practicable, and it is unclear what mitigation benefit would result from such a requirement in relation to vessel strike. The Commission does not suggest what measures other than those prescribed in this IHA would potentially prove more effective in reducing the risk of strike.

Therefore, we have not included this requirement in the authorization. NMFS retains authority to modify the IHA and cease all activities immediately based on a vessel strike and will exercise that authority if warranted.

With respect to the Commission's recommendation that NMFS include these requirements in all proposed and final IHAs, NMFS determines the requirements for mitigation measures in each authorization based on numerous case-specific factors, including the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. As NMFS must make these determinations on a case by case basis, we therefore do not agree with this recommendation.

*Comment*—The Commission recommends that NMFS refrain from issuing a renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA.

*Response*—In prior responses to comments about IHA Renewals (e.g., 84 FR 52464; October 02, 2019 and 85 FR 53342; August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA and, therefore, we plan to continue to issue qualifying Renewals when the requirements outlined on our website are met. Thus, NMFS agrees with the Commission's recommendation that we should not issue a Renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA. NMFS has found that the Renewal process is consistent with the statutory requirements of the MMPA and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

#### **Changes From the Proposed IHA**

The only substantive change from the proposed IHA is the revision of take estimates. As noted in the notice of proposed IHA, L-DEO agreed to modify its originally proposed tracklines in order to avoid takes of sea otters (through consultation with the U.S. Fish and Wildlife Service) and to minimize impacts on Steller sea lions (by moving tracklines near specific, known sea lion rookeries such that the track is

sufficiently distant from shore that the estimated Level B harassment zone does not overlap with a 3,000 ft (0.9-km) buffer around these areas). Although L-DEO had committed to these changes at the time of publication of the notice of proposed IHA, take estimates had not yet been revised accordingly. In addition, the take estimate for Steller sea lions was revised through use of the adjusted density value recommended by the Marine Mammal Commission (as discussed above). For species where the take number changed, all take numbers decreased, except for the Steller sea lion, where the increased density value led to an increase in the take estimate.

During the public review period, NMFS-affiliated scientists noted that a newly described species of beaked whale (*Berardius minimus*; Yamada *et al.*, 2019) could be present in the survey area. At least five specimens of Sato's beaked whale have been reported from U.S. waters in the vicinity of the eastern Aleutian Islands, St. George Island, and the southern Alaska Peninsula (Morin *et al.*, 2017). No information is available regarding the occurrence of this species. Therefore, NMFS has authorized take of one group of the species, as represented by the average group size of *Berardius* spp. from Barlow (2016).

Finally, NMFS has included reporting requirements recommended by the Marine Mammal Commission (discussed above).

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments](http://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website ([www.fisheries.noaa.gov/find-species](http://www.fisheries.noaa.gov/find-species)).

Table 1 lists all species with expected potential for occurrence in the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2020).

PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs. All MMPA stock information presented in Table 1 is the most recent available at the time of publication and is available in the 2019 SARs (Caretta *et al.*, 2020; Muto *et al.*, 2020).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/ST <sup>3</sup>
<b>Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)</b>						
Family Balaenidae: North Pacific right whale	<i>Eubalaena japonica</i> .....	Eastern North Pacific (ENP)	E/D; Y	31 (0.226; 26; 2015) .....	0.05	0
Family Eschrichtiidae: Gray whale .....	<i>Eschrichtius robustus</i> .....	ENP .....	-; N	26,960 (0.05; 25,849; 2016)	801	139
		Western North Pacific (WNP).	E/D; Y	290 (n/a; 271; 2016) .....	0.12	Unk
Family Balaenopteridae (rorquals): Humpback whale .....	<i>Megaptera novaeangliae kuzira</i> .	Central North Pacific (CNP) *	E/D; Y	10,103 (0.3; 7,891; 2006) ....	83	25
		Western North Pacific * .....	E/D; Y	1,107 (0.3; 865; 2006) .....	3	2.6
Minke whale .....	<i>Balaenoptera acutorostrata scammoni</i> .	Alaska * .....	-; N	Unknown .....	n/a	0
Sei whale .....	<i>B. borealis borealis</i> .....	ENP .....	E/D; Y	519 (0.4; 374; 2014) .....	0.75	≥0.2
Fin whale .....	<i>B. physalus physalus</i> .....	Northeast Pacific * .....	E/D; Y	Unknown .....	n/a	0.4
Blue whale .....	<i>B. musculus musculus</i> .....	ENP .....	E/D; Y	1,496 (0.44; 1,050; 2014) ....	6 1.2	≥19.4
<b>Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>						
Family Physeteridae: Sperm whale .....	<i>Physeter macrocephalus</i> .....	North Pacific * .....	E/D; Y	Unknown .....	n/a	4.7
Family Ziphiidae (beaked whales): Cuvier's beaked whale ...	<i>Ziphius cavirostris</i> .....	Alaska .....	-; N	Unknown .....	n/a	0
Baird's beaked whale ....	<i>Berardius bairdii</i> .....	Alaska .....	-; N	Unknown .....	n/a	0
Sato's beaked whale .....	<i>B. minimus</i> .....	n/a .....	-; N	Unknown .....	n/a	0
Stejneger's beaked whale.	<i>Mesoplodon stejnegeri</i> .....	Alaska .....	-; N	Unknown .....	n/a	0
Family Delphinidae: Pacific white-sided dolphin.	<i>Lagenorhynchus obliquidens</i>	North Pacific <sup>5</sup> .....	-; N	26,880 (n/a; 26,880; 1990) ..	n/a	0
Northern right whale dolphin.	<i>Lissodelphis borealis</i> .....	CA/OR/WA * .....	-; N	26,556 (0.44; 18,608; 2014)	179	3.8
Risso's dolphin .....	<i>Grampus griseus</i> .....	CA/OR/WA * .....	-; N	6,336 (0.32; 4,817; 2014) ....	46	≥3.7
Killer whale .....	<i>Orcinus orca</i> <sup>4</sup> .....	ENP Offshore .....	-; N	300 (0.1; 276; 2012) .....	2.8	0

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
Family Phocoenidae (porpoises):	ENP Gulf of Alaska, Aleutian Islands, and Bering Sea Transient	.....	-; N	587 (n/a; 2012) .....	5.9	1
	ENP Alaska Resident .....	.....	-; N	2,347 (n/a; 2012) .....	24	1
	Harbor porpoise .....	<i>Phocoena phocoena vomerina</i> , Bering Sea <sup>5</sup> .....	-; Y	48,215 (0.22; 40,150; 1999)	n/a	0.2
	Dall's porpoise .....	<i>Phocoenoides dalli dalli</i> .....	Alaska <sup>5</sup> .....	-; N	83,400 (0.097; n/a; 1991) ....	n/a
<b>Order Carnivora—Superfamily Pinnipedia</b>						
Family Otariidae (eared seals and sea lions):						
Northern fur seal .....	<i>Callorhinus ursinus</i> .....	Pribilof Islands/Eastern Pacific	D; Y	620,660 (0.2; 525,333; 2016)	11,295	399
Steller sea lion .....	<i>Eumetopias jubatus jubatus</i>	Western U.S .....	E/D; Y	53,624 (n/a; 2018) .....	322	247
Family Phocidae (earless seals):						
Harbor seal .....	<i>Phoca vitulina richardii</i> .....	Aleutian Islands .....	-; N	5,588 (n/a; 5,366; 2018) .....	97	90
Spotted seal .....	<i>P. largha</i> .....	Alaska* .....	-; N	461,625 (n/a; 423,237; 2013)	12,697	329
Ribbon seal .....	<i>Histiophoca fasciata</i> .....	Alaska* .....	-; N	184,697 (n/a; 163,086; 2013)	9,785	3.9
Northern elephant seal ...	<i>Mirounga angustirostris</i> .....	California Breeding .....	-; N	179,000 (n/a; 81,368; 2010)	4,882	8.8

\* Stocks marked with an asterisk were addressed in further detail in the notice of proposed IHA.  
<sup>1</sup> Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.  
<sup>2</sup> NMFS marine mammal stock assessment reports at: [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments](http://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments). CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable. For most stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.  
<sup>3</sup> These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the 2019 SARs.  
<sup>4</sup> Transient and resident killer whales are considered unnamed subspecies (Committee on Taxonomy, 2020).  
<sup>5</sup> Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.  
<sup>6</sup> This stock is known to spend a portion of time outside the U.S. EEZ. Therefore, the PBR presented here is the allocation for U.S. waters only and is a portion of the total. The total PBR for blue whales is 2.1 (7/12 allocation for U.S. waters). Annual M/SI presented for these species is for U.S. waters only.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.*, 2015), NMFS established 14 distinct population segments (DPS) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 1.

Within Alaska waters, four current humpback whale DPSs may occur: The Western North Pacific (WNP) DPS (endangered), Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). Two humpback whale stocks designated under the MMPA may occur within Alaskan waters: The Western North Pacific Stock and the Central North Pacific Stock. Both these stocks are designated as depleted under the MMPA. According to Wade (2017), in the Aleutian Islands and Bering, Chukchi, and Beaufort Seas,

encountered whales are most likely to be from the Hawaii DPS (86.8 percent), but could be from the Mexico DPS (11 percent) or WNP DPS (2.1 percent). Note that these probabilities reflect the upper limit of the 95 percent confidence interval of the probability of occurrence; therefore, numbers may not sum to 100 percent for a given area.

Additional detailed information regarding the potentially affected stocks of marine mammals was provided in the notice of proposed IHA (85 FR 45389; July 28, 2020). No new information is available, and we do not reprint that discussion here. Please see the notice of proposed IHA for additional information.

*Biologically Important Areas (BIA)*

Several biologically important areas for marine mammals are recognized in the Bering Sea, Aleutian Islands, and Gulf of Alaska. Critical habitat is designated for the Steller sea lion (58 FR 45269; August 27, 1993). Critical habitat is defined by section 3 of the ESA as (1)

the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Designated Steller sea lion critical habitat includes terrestrial, aquatic, and air zones that extend 3,000 ft (0.9 km) landward, seaward, and above each major rookery and major haulout in Alaska. For the Western DPS, the aquatic zone extends further, out 20 nmi (37 km) seaward of major rookeries and haulouts west of 144°W. In addition to major rookeries and haulouts, critical habitat foraging areas have been designated in Seguam Pass, Bogoslof area, and Shelikof Strait. Of the foraging areas, only Seguam Pass overlaps the

proposed survey area. The Bogoslof foraging area is located to the east of the survey area, and Shelikof Strait is in the western Gulf of Alaska. In addition, “no approach” buffer areas around rookery sites of the Western DPS of Steller sea lions are identified. “No approach” zones are restricted areas wherein no vessel may approach within 3 nmi (5.6 km) of listed rookeries; some of these are adjacent to the survey area. In the Aleutian Islands, critical habitat includes 66 sites (26 rookeries and 40 haulout sites) and foraging areas in Segum Pass (within the proposed survey area) and the Bogoslof area (east of the survey area). Please see Figure 1 of L-DEO’s application for additional detail.

Critical habitat has also been designated for the North Pacific right whale (73 FR 19000; April 8, 2008). The designation includes areas in the Bering Sea and Gulf of Alaska. However, the closest critical habitat unit, in the Bering Sea, is more than 400 km away from the proposed survey area. There is no critical habitat designated for any other species within the region. In addition, a feeding BIA for right whales is recognized to the south of Kodiak Island, and the Bering Sea critical habitat unit is also recognized as a BIA.

For fin whales, a BIA for feeding is recognized in Shelikof Strait, between Kodiak Island and the Alaska Peninsula, and extending west to the Semidi Islands. For gray whales, a feeding BIA is recognized to the south of Kodiak Island, and a migratory BIA is recognized as extending along the continental shelf throughout the Gulf of Alaska, through Unimak Pass in the eastern Aleutian Islands, and along the Bering Sea continental shelf. For humpback whales, feeding BIAs are recognized around the Shumagin Islands and around Kodiak Island. These areas are sufficiently distant from the proposed survey area that no effects to important behaviors occurring in the BIAs should be expected. Moreover, the timeframe of the planned survey does not overlap with expected highest abundance of whales on the feeding BIAs or with gray whale migratory periods.

A separate feeding BIA is recognized in the Bering Sea for fin whales. Because the distribution of presumed feeding fin whales in the Bering Sea is widespread, a wide region from the Middle Shelf domain to the slope is considered to be a BIA. The highest densities of feeding fin whales in the Bering Sea likely occur from June through September. The BIA is considered as being in waters shallower than the 1,000-m isobath on the eastern

Bering Sea shelf, and does not extend past approximately Unimak Pass in the Aleutian Islands. A gray whale feeding BIA is recognized along the north side of the Alaska Peninsula. Marine mammal behavior in these BIAs is similarly not expected to be affected by the proposed survey due to distance and timing.

Large aggregations of feeding humpback whales have historically been observed along the northern side of the eastern Aleutian Islands and Alaska Peninsula, and a feeding BIA is recognized. Highest densities are expected from June through September. The eastern edge of the planned survey area is approximately 100 km west of the western edge of the recognized BIA, but it is possible that the survey could affect feeding humpback whales. For more information on BIAs, please see Ferguson et al. (2015a, 2015b).

#### *Unusual Mortality Events (UME)*

A UME is defined under the MMPA as “a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.” For more information on UMEs, please visit: [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events](http://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events). Currently recognized UMEs in Alaska involving species under NMFS’ jurisdiction include those affecting ice seals in the Bering and Chukchi Seas and gray whales. Since June 1, 2018, elevated strandings for bearded, ringed and spotted seals have occurred in the Bering and Chukchi seas in Alaska, with causes undetermined. For more information, please visit: [www.fisheries.noaa.gov/alaska/marine-life-distress/2018-2020-ice-seal-unusual-mortality-event-alaska](http://www.fisheries.noaa.gov/alaska/marine-life-distress/2018-2020-ice-seal-unusual-mortality-event-alaska).

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America from Mexico through Alaska. As of June 5, 2020, there have been a total of 340 whales reported in the event, with approximately 168 dead whales in Mexico, 159 whales in the United States (53 in California; 9 in Oregon; 42 in Washington, 55 in Alaska), and 13 whales in British Columbia, Canada. For the United States, the historical 18-year 5-month average (Jan–May) is 14.8 whales for the four states for this same time-period. Several dead whales have been emaciated with moderate to heavy whale lice (cyamid) loads. Necropsies have been conducted on a subset of whales with additional findings of vessel strike in three whales and entanglement in one whale. In Mexico, 50–55 percent of the free-ranging whales

observed in the lagoons in winter have been reported as “skinny” compared to the annual average of 10–12 percent “skinny” whales normally seen. The cause of the UME is as yet undetermined. For more information, please visit: [www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast-and](http://www.fisheries.noaa.gov/national/marine-life-distress/2019-2020-gray-whale-unusual-mortality-event-along-west-coast-and).

Another recent, notable UME involved large whales and occurred in the western Gulf of Alaska and off of British Columbia, Canada. Beginning in May 2015, elevated large whale mortalities (primarily fin and humpback whales) occurred in the areas around Kodiak Island, Afognak Island, Chirikof Island, the Semidi Islands, and the southern shoreline of the Alaska Peninsula. Although most carcasses have been non-retrievable as they were discovered floating and in a state of moderate to severe decomposition, the UME is likely attributable to ecological factors, *i.e.*, the 2015 El Niño, “warm water blob,” and the Pacific Coast domoic acid bloom. The UME was closed in 2016. More information is available online at [www.fisheries.noaa.gov/national/marine-life-distress/2015-2016-large-whale-unusual-mortality-event-western-gulf-alaska](http://www.fisheries.noaa.gov/national/marine-life-distress/2015-2016-large-whale-unusual-mortality-event-western-gulf-alaska).

#### *Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-

frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from

Southall *et al.* (2007) retained. Marine mammal hearing groups and their

associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales) .....	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales) .....	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i> ).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals) .....	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals) .....	60 Hz to 39 kHz.

\* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Twenty-four marine mammal species (18 cetacean and six pinniped (two otariid and four phocid) species) are considered herein. Of the cetacean species that may be present, seven are classified as low-frequency cetaceans (*i.e.*, all mysticete species), nine are classified as mid-frequency cetaceans (*i.e.*, all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.*, porpoises).

#### Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for activities occurring within the same specified geographical region (*e.g.*, 83 FR 29212, June 22, 2018; 84 FR 14200, April 9, 2019; 85 FR 19580, April 7, 2020). Section 7 of L-DEO's application provides a comprehensive discussion of the potential effects of the proposed survey. We have reviewed L-DEO's application and believe it is accurate and complete. No significant new information is available. The information in L-DEO's application and in the referenced **Federal Register** notices are sufficient to inform our determinations regarding the potential effects of L-DEO's specified activity on marine mammals and their habitat. We refer the reader to these documents rather than repeating the information here. The referenced information

includes a summary and discussion of the ways that the specified activity may impact marine mammals and their habitat. Consistent with the analysis in our prior **Federal Register** notices for similar L-DEO surveys and after independently evaluating the analysis in L-DEO's application, we determine that the survey is likely to result in the takes described in the Estimated Take section of this document and that other forms of take are not expected to occur.

The Estimated Take section includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the potential effects of the specified activity, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

#### Description of Active Acoustic Sound Sources

The notice of proposed IHA provided a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. Please see that document (85 FR 45389; July 28, 2020) for additional information. For general information on sound and its interaction with the marine environment, please see, *e.g.*, Au and Hastings (2008); Richardson *et al.* (1995); Urick (1983).

#### Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of

“small numbers” and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes are primarily by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high-frequency cetaceans (*i.e.*, porpoises). The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively

inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take numbers.

*Acoustic Thresholds*

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

*Level B Harassment for non-explosive sources*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying

degrees by other factors related to the source (e.g., frequency, predictability, duty cycle), the environment (e.g., bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.*, 2007, Ellison *et al.*, 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (i.e., Level B harassment) when exposed to underwater anthropogenic noise above a received level of 160 dB re 1 microPascal (µPa) root mean square (rms) for the impulsive source (i.e., seismic airguns) evaluated here.

*Level A harassment for non-explosive sources*—NMFS’ Technical Guidance for Assessing the Effects of

Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). L-DEO’s seismic survey includes the use of impulsive (seismic airguns) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance](http://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance).

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans .....	Cell 1: $L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB .....	Cell 2: $L_{E,LF,24h}$ : 199 dB.
Mid-Frequency (MF) Cetaceans .....	Cell 3: $L_{pk,flat}$ : 230 dB; $L_{E,MF,24h}$ : 185 dB .....	Cell 4: $L_{E,MF,24h}$ : 198 dB.
High-Frequency (HF) Cetaceans .....	Cell 5: $L_{pk,flat}$ : 202 dB; $L_{E,HF,24h}$ : 155 dB .....	Cell 6: $L_{E,HF,24h}$ : 173 dB.
Phocid Pinnipeds (PW) (Underwater) .....	Cell 7: $L_{pk,flat}$ : 218 dB; $L_{E,PW,24h}$ : 185 dB .....	Cell 8: $L_{E,PW,24h}$ : 201 dB.
Otariid Pinnipeds (OW) (Underwater) .....	Cell 9: $L_{pk,flat}$ : 232 dB; $L_{E,OW,24h}$ : 203 dB .....	Cell 10: $L_{E,OW,24h}$ : 219 dB.

\*Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

**Note:** Peak sound pressure ( $L_{pk}$ ) has a reference value of 1 µPa, and cumulative sound exposure level ( $L_E$ ) has a reference value of 1 µPa<sup>2</sup>s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that feed into identifying the area ensonified above the acoustic thresholds, which include source levels and acoustic propagation modeling.

L-DEO’s modeling methodologies are described in greater detail in Appendix A of L-DEO’s IHA application. The survey would acquire data using the 36-airgun array with a total discharge volume of 6,600 in<sup>3</sup> at a maximum tow depth of 9 m. During approximately 10 percent of the planned survey tracklines, the array would be used at half the total volume (i.e., an 18-airgun array with total volume of 3,300 in<sup>3</sup>). L-DEO’s modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the

array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). To validate the model results, L-DEO measured propagation of pulses from the 36-airgun array at a tow depth of 6 m in the Gulf of Mexico, for deep water (1,600 m), intermediate water depth on the slope (600–1,100 m), and shallow water (50 m) (Tolstoy *et al.*, 2009; Diebold *et al.*, 2010).

L-DEO collected a MCS data set from R/V *Langseth* on an 8 km streamer in 2012 on the shelf of the Cascadia Margin off of Washington in water up to 200 m deep that allowed Crone *et al.* (2014) to analyze the hydrophone streamer (>1,100 individual shots). These empirical data were then analyzed to determine in situ sound levels for shallow and upper intermediate water depths. These data suggest that modeled radii were 2–3 times larger than the measured radii in shallow water.

Similarly, data collected by Crone *et al.* (2017) during a survey off New Jersey in 2014 and 2015 confirmed that in situ measurements collected by R/V *Langseth* hydrophone streamer were 2–3 times smaller than the predicted radii.

L-DEO model results are used to determine the assumed radial distance to the 160-dB rms threshold for these arrays in deep water (>1,000 m) (down to a maximum water depth of 2,000 m). Water depths in the project area may be up to 7,100 m, but marine mammals in the region are generally not anticipated to dive below 2,000 m (Costa and Williams, 1999). For the 36-airgun array, the estimated radial distance for intermediate (100–1,000 m) and shallow (<100 m) water depths is taken from Crone *et al.* (2014). L-DEO typically derives estimated distances for intermediate water depths by applying a correction factor of 1.5 to the model results for deep water. The Crone *et al.*

(2014) empirical data produce results consistent with L-DEO's typical approach (8,233 m versus 8,444 m). For the 18-airgun array, the radii for shallow

and intermediate-water depths are taken from Crone *et al.* (2014) and scaled to account for the difference in airgun volume.

The estimated distances to the Level B harassment isopleths for the arrays are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Level B harassment zone (m)
36 airgun array; 6,600 in <sup>3</sup> .....	9	>1,000 100–1,000 <100	<sup>1</sup> 5,629 <sup>3</sup> 8,233 <sup>3</sup> 11,000
18 airgun array; 3,300 in <sup>3</sup> .....	9	>1,000 100–1,000 <100	<sup>1</sup> 3,562 <sup>2</sup> 3,939 <sup>2</sup> 5,263

<sup>1</sup> Distance based on L-DEO model results.

<sup>2</sup> Based on empirical data from Crone *et al.* (2014) with scaling factor based on deep-water modeling applied to account for differences in array size.

<sup>3</sup> Based on empirical data from Crone *et al.* (2014).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L-DEO using the NUCLEUS source modeling software program and the NMFS User Spreadsheet, described below. The acoustic thresholds for impulsive sounds (e.g., airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL<sub>cum</sub>) and peak sound pressure metrics (NMFS 2018). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (i.e., metric resulting in the largest isopleth). The SEL<sub>cum</sub> metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL<sub>cum</sub> thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL<sub>cum</sub> and peak sound pressure level (SPL) for the *Langseth* airgun arrays were derived from calculating the modified far-field signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (e.g., 9 km), and this level is back projected

mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.*, 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.*, 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L-DEO used the acoustic modeling methodology as used for estimating Level B harassment distances with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays, which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Langseth's* airgun array (modeled in 1 Hz bands) were used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (µPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (i.e., to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's "safe distance" methodology for mobile sources (described by Sivle *et al.*, 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to the planned survey, potential radial distances to auditory injury zones were then calculated for SEL<sub>cum</sub> thresholds.

Inputs to the User Spreadsheet in the form of estimated source levels are shown in Appendix A of L-DEO's application. User Spreadsheets used by L-DEO to estimate distances to Level A harassment isopleths for the airgun arrays are also provided in Appendix A of the application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the survey are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL<sub>cum</sub>

and Peak SPL<sub>flat</sub>) is exceeded (*i.e.*, metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Source (volume)	Threshold	Level A harassment zone (m)				
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
36-airgun array (6,600 in <sup>3</sup> )	SEL <sub>cum</sub>	376	0	1	10	0
	Peak	39	14	229	42	11
18-airgun array (3,300 in <sup>3</sup> )	SEL <sub>cum</sub>	55	0	0	2	0
	Peak	23	11	119	25	10

Note that because of some of the assumptions included in the methods used (*e.g.*, stationary receiver with no vertical or horizontal movement in response to the acoustic source), isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimation of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as this seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Auditory injury is unlikely to occur for mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds given very small modeled zones of injury for those species (all estimated zones less than 15 m for mid-frequency cetaceans and otariid pinnipeds, up to a maximum of 42 m for phocid pinnipeds), in context of distributed source dynamics. The source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a “point source.” For distances within the near-field, *i.e.*, approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures

in the near-field will be significantly lower than the output of the largest individual element. Here, the peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds peak SPL isopleth distances would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m. We provided additional discussion and quantitative support for this theoretical argument in the notice of proposed IHA. Please see that notice (85 FR 45389; July 28, 2020) for additional information.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.*, Nachtigall *et al.*, 2018) are considered. We do not believe that Level A harassment is a likely outcome for any mid-frequency cetacean, otariid pinniped, or phocid pinniped and do not propose to authorize any Level A harassment for these species. Any estimated exposures above Level A harassment criteria are assumed to be taken by Level B harassment instead (see Table 6).

*Marine Mammal Occurrence*

Information about the presence, density, and group dynamics of marine mammals that informs the take calculations was provided in our notice of proposed IHA (85 FR 45389; July 28, 2020). That information is not re-printed here. For additional detail, please see the proposed IHA notice and Appendix B of L-DEO’s application. Density values are provided in Table B–1 of L-DEO’s application. No new information is available since we published the notice of proposed IHA, and no changes

have been made, other than those described in the Changes from the Proposed IHA section, provided previously in this document.

The Marine Mammal Commission noted several concerns with the density values used for Steller sea lions. As noted by the Commission, L-DEO used data from Department of the Navy (2014), which relied on abundance estimates from the 2008 stock assessment report divided by an area. The Commission raised the following issues: (1) Abundance estimates have increased since the 2008 SAR and the original estimates were based on portions of the eastern stock of Steller sea lions that would not occur in L-DEO’s survey area; (2) the density value should be corrected on the basis of telemetry data, as done in Department of the Navy (2019); and (3) true density estimates may be even greater in shallow waters near critical habitat areas. For these reasons, the Commission recommended use of a corrected, revised density value of 0.0392 sea lions/km<sup>2</sup> in shallow- and intermediate-water depths, while retaining the estimate of 0.0098 sea lions/km<sup>2</sup> in deep water. NMFS concurred with the recommendation and the take calculations for shallow- and intermediate-water depths were revised accordingly.

In addition, as described in Changes from the Proposed IHA, NMFS was made aware of the potential occurrence of Sato’s beaked whale (a newly described species previously considered to be a conspecific form of Baird’s beaked whale) in the survey area and added a nominal amount of take in the form of one mean group size. This inclusion likely represents an overestimate of actual take, as occurrence of Sato’s beaked whale would have been accounted for in the existing density estimates for Baird’s beaked whale. However, we determined it appropriate to acknowledge the presence and potential exposure of this new species.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A and Level B harassment thresholds. The distance for the 160-dB threshold (based on L-DEO model results) was used to draw a buffer around every transect line in a geographic information system (GIS) to determine the total ensonified area in each depth category. Estimated incidents of exposure above Level A and Level B harassment criteria are

presented in Table 6. As noted previously, L-DEO has added 25 percent in the form of operational days, which is equivalent to adding 25 percent to the proposed line-kms to be surveyed. This accounts for the possibility that additional operational days are required, but likely results in an overestimate of actual exposures.

The estimated marine mammal exposures above harassment thresholds are generally assumed here to equate to take, and the estimates form the basis for our take authorization numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur, *i.e.*, mid-frequency cetaceans and all pinnipeds, the estimated exposures above Level A harassment thresholds have been added to the estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that is authorized. Estimated exposures and authorized take numbers are shown in Table 6. Regarding humpback whale

take numbers, we assume that whales encountered will follow Wade (2017), *i.e.*, that 86.8 percent of takes would accrue to the Hawaii DPS, 11 percent to the Mexico DPS, and 2.1 percent to the WNP DPS. Of the estimated take of gray whales, we assume that 1.1 percent of encountered whales would be from the WNP stock (Carretta *et al.*, 2019) and authorize take accordingly.

Importantly, as described in the Changes from the Proposed IHA section, revised take numbers have been produced after accounting for modification of planned tracklines to avoid take of sea otters and to maintain a larger buffer around specific Steller sea lion haul-outs and rookeries. Aside from the change to Steller sea lion density in shallow- and intermediate-depth waters and the addition of take of Sato's beaked whale, all changes to take numbers from the notice of proposed IHA result from revised calculations accounting for these shifts in planned tracklines.

TABLE 6—ESTIMATED TAKING BY LEVEL A AND LEVEL B HARASSMENT, AND PERCENTAGE OF POPULATION

Species	Stock <sup>1</sup>	Estimated Level A harassment	Estimated Level B harassment	Authorized Level A harassment	Authorized Level B harassment	Total take	Percent of stock <sup>1</sup>
North Pacific right whale <sup>2</sup>		0	0	0	2	2	6.5
Humpback whale	WNP	106	1,842	106	1,842	1,948	176.0
	CNP						19.3
Blue whale		2	23	2	23	25	1.7
Fin whale <sup>5</sup>		104	1,650	104	1,650	1,754	n/a
Sei whale		0	5	0	5	5	1.0
Minke whale <sup>5</sup>		2	27	2	27	29	n/a
Gray whale	ENP	1	61	1	61	62	0.2
	WNP	0	1	0	1	1	0.3
Sperm whale <sup>5</sup>		0	43	0	43	43	n/a
Baird's beaked whale <sup>5</sup>		0	24	0	24	24	n/a
Sato's beaked whale <sup>5</sup>				0	9	9	n/a
Stejneger's beaked whale <sup>3,5</sup>		0	47	0	47	47	n/a
Cuvier's beaked whale <sup>5</sup>		0	106	0	106	106	n/a
Pacific white-sided dolphin		2	1,000	0	1,002	1,002	3.7
Northern right whale dolphin <sup>3</sup>				0	58	58	0.2
Risso's dolphin <sup>3</sup>		0	0	0	22	22	0.3
Killer whale	Offshore	0	141	0	141	141	47.0
	Transient						24.0
	Resident						6.0
Dall's porpoise		157	4,312	157	4,312	4,469	5.4
Harbor porpoise		23	679	23	679	702	1.5
Northern fur seal		1	788	0	789	789	0.1
Steller sea lion		2	907	0	909	909	1.7
Northern elephant seal		1	105	0	106	106	0.1
Harbor seal		1	148	0	149	149	2.7
Spotted seal <sup>4</sup>				0	5	5	0.0
Ribbon seal <sup>4</sup>				0	5	5	0.0

<sup>1</sup> In most cases, where multiple stocks are being affected, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all takes occurred within each stock. Where necessary, additional discussion is provided in the "Small Numbers Analysis" section.

<sup>2</sup> In the notice of proposed IHA, estimated exposure of one whale was increased to group size of two (Shelden *et al.*, 2005; Waite *et al.*, 2003; Wade *et al.*, 2011). Following revision of the take estimates, no exposures of North Pacific right whale are predicted. We retain the take number, reflecting potential exposure of one group of two whales.

<sup>3</sup> L-DEO requested authorization of northern right whale dolphin take equivalent to exposure of one group. In the notice of proposed IHA, estimated exposure of one Risso's dolphin was increased to group size of 22. Following revision of the take estimates, no exposures of Risso's dolphin are predicted. We retain the take number, reflecting potential exposure of one group of 22 dolphins. Take of Sato's beaked whale reflects mean group size information for Baird's beaked whale. Group sizes for these species follow Barlow (2016).

<sup>4</sup> L-DEO requested authorization of five takes each of spotted seal and ribbon seal.

<sup>5</sup> As noted in Table 1, there is no estimate of abundance available for these species.

## Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

As described previously, L-DEO agreed to modify certain tracklines in order to reduce the number and intensity of acoustic exposures of Steller sea lions in waters around the specific haul-outs and rookeries of greatest importance for the stock. Tracklines were modified to ensure that the vessel maintains a standoff distance sufficient to prevent the assumed Level B harassment zone from overlapping with

a 3,000-ft (0.9-km) buffer around those haul-outs and rookeries.

### *Vessel-Based Visual Mitigation Monitoring*

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSO)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, within which observation of certain marine mammals requires shutdown of the acoustic source, but also a buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.*, before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.*, ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 m exclusion zone, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). Visual monitoring of the exclusion zone and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the exclusion zone by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the exclusion zone.

L-DEO must use dedicated, trained, NMFS-approved PSOs. The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs (discussed below) aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire

protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.*, any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.*, anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown of the acoustic source.

During use of the airgun (*i.e.*, anytime the acoustic source is active, including ramp-up), detections of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.*, daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and

behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

#### *Passive Acoustic Monitoring*

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an exclusion zone around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (e.g., due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V *Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic

and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional five hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to Beaufort sea state (BSS) 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable exclusion zone in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of five hours in any 24-hour period.

#### *Establishment of Exclusion and Buffer Zones*

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, e.g., auditory injury, disruption of critical behaviors. The PSOs will establish a minimum EZ with a 500-m radius. The 500-m EZ is based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source will be shut down.

The 500-m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL<sub>cum</sub> and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500-m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

An extended EZ of 1,500 m must be enforced for all beaked whales. No buffer of this extended EZ is required.

#### *Pre-Clearance and Ramp-Up*

Ramp-up (sometimes referred to as “soft start”) means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array’s airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (i.e., the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and

pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as killer whales and Risso's dolphins);

- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;

- PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;

- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;

- If the acoustic source is shut down for brief periods (*i.e.*, less than 30 minutes) for reasons other than that described for shutdown (*e.g.*, mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.*, BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 minutes is not required; and

- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

#### Shutdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to delay the start of survey

operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.*, anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable exclusion zone and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable exclusion zone, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the 500-m EZ. The animal would be considered to have cleared the 500-m EZ if it is visually observed to have departed the 500-m EZ, or it has not been seen within the 500-m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm whales, beaked whales, killer whales, and Risso's dolphins.

The shutdown requirement can be waived for small dolphins if an individual is visually detected within the exclusion zone. As defined here, the small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.*, bow riding). This exception to the shutdown requirement applies solely to specific genera of small dolphins (*Lagenorhynchus* and *Lissodelphis*).

We include this small dolphin exception because shutdown requirements for small dolphins under all circumstances represent

practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.*, delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.*, PTS).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.*, Barkaszi *et al.*, 2012, 2018). The potential for increased shutdowns resulting from such a measure would require the *Langseth* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.*, large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger exclusion zone).

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.*, animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small

odontocetes and pinnipeds, and 30 minutes for mysticetes and all other odontocetes, including sperm whales, beaked whales, killer whales, and Risso's dolphins, with no further observation of the marine mammal(s).

L-DEO must implement shutdown if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the takes have been met, approaches the Level A or Level B harassment zones. L-DEO must also implement shutdown if any of the following are observed at any distance:

- Any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult);
- An aggregation of six or more large whales; and/or
- A North Pacific right whale.

#### *Vessel Strike Avoidance*

1. Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.*, PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.

2. Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.

4. All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.

5. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other protected species, with an understanding that at times this may not

be possible (*e.g.*, for animals that approach the vessel).

6. When protected species are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.*, attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If protected species are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

7. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, as well as other measures considered by NMFS described above, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected 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 IHA 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 authorizations 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 proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

#### *Vessel-Based Visual Monitoring*

As described above, PSO observations will take place during daytime airgun operations. During seismic operations, at least five visual PSOs would be based aboard the *Langseth*. Two visual PSOs would be on duty at all time during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.*, 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.*, Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. PSOs must have the following requirements and qualifications:
  - PSOs shall be independent, dedicated, trained visual and acoustic

PSOs and must be employed by a third-party observer provider;

- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);

- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;

- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;

- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.*, experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;

- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;

- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;

- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and

- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or

government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;

- PSO names and affiliations;
- Dates of departures and returns to port with port name;

- Date and participants of PSO briefings;

- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;

- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;

- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;

- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.*, vessel traffic, equipment malfunctions); and

- Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.*, pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).

The following information should be recorded upon visual observation of any protected species:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

- PSO who sighted the animal;

- Time of sighting;

- Vessel location at time of sighting;

- Water depth;

- Direction of vessel's travel (compass direction);

- Direction of animal's travel relative to the vessel;

- Pace of the animal;

- Estimated distance to the animal and its heading relative to vessel at initial sighting;

- Identification of the animal (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;

- Estimated number of animals (high/low/best);

- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

- Detailed behavior observations (*e.g.*, number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

- Animal's closest point of approach and/or closest distance from any element of the acoustic source;

- Platform activity at time of sighting (*e.g.*, deploying, recovering, testing, shooting, data acquisition, other); and

- Description of any actions implemented in response to the sighting (*e.g.*, delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

- An acoustic encounter identification number, and whether the detection was linked with a visual sighting;

- Date and time when first and last heard;

- Types and nature of sounds heard (*e.g.*, clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and

- Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

### Reporting

A report must be submitted to NMFS within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report must summarize the dates and locations of seismic operations, all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and all information required to be collected (as listed in the preceding section).

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (e.g., when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the data collected as described above and in the IHA. A final report must be submitted within 30 days following resolution of any comments on the draft report.

### Reporting Injured or Dead Marine Mammals

*Discovery of injured or dead marine mammals*—In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the L-DEO shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

*Vessel strike*—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L-DEO shall report the incident to OPR, NMFS and to the NMFS Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the animal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (e.g., dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

### Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise L-DEO of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following: If at any time, the marine mammal the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the IHA-holder that the shutdown around the animals' location

is no longer needed. Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises L-DEO that all live animals involved have left the area (either of their own volition or following an intervention).

If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (e.g., extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

*Additional Information Requests*—if NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted, and an investigation into the stranding is being pursued, NMFS will submit a written request to L-DEO indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information:

- Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
- If available, description of the behavior of any marine mammal(s) observed preceding (i.e., within 48 hours and 50 km) and immediately after the discovery of the stranding.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

### Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of

marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Tables 1, given that NMFS expects the anticipated effects of the planned geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of L-DEO’s planned survey, even in the absence of mitigation, and none is authorized. Similarly, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We are authorizing a limited number of instances of Level A harassment of seven species (low- and high-frequency cetacean hearing groups only) and Level B harassment only of the remaining marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS, not total deafness, because of the constant movement of both the R/V *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time. Since the duration of exposure to loud sounds will be relatively short it would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely move away from a sound source that

represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the R/V *Langseth*’s approach due to the vessel’s relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (e.g., Southall *et al.*, 2007, Ellison *et al.*, 2012).

Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project areas; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (16 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

The tracklines of this survey either traverse or are proximal to critical habitat areas for the Steller sea lion and to a feeding BIA for humpback whales. However, only a portion of seismic survey days would actually occur in or near these areas. As described previously, L-DEO’s planned tracklines do not extend within 3 nmi of any island, and L-DEO has agreed to reduce the active array by half of the elements, also reducing the total array volume by half, over the 10 percent of planned tracklines that are closest to shore. Finally, L-DEO has agreed to maintain a standoff distance around specific Steller sea lion haul-outs and rookeries such that the modeled Level B harassment zone would not overlap a 3,000-ft (0.9-km) buffer around those areas. Impacts to Steller sea lions within these areas, and throughout the survey area, are expected to be limited to short-term behavioral disturbance, with no lasting biological consequences.

Yazvenko *et al.* (2007b) reported no apparent changes in the frequency of feeding activity in Western gray whales exposed to airgun sounds in their feeding grounds near Sakhalin Island. Goldbogen *et al.* (2013) found blue whales feeding on highly concentrated prey in shallow depths (such as the

conditions expected within humpback feeding BIAs) were less likely to respond and cease foraging than whales feeding on deep, dispersed prey when exposed to simulated sonar sources, suggesting that the benefits of feeding for humpbacks foraging on high-density prey may outweigh perceived harm from the acoustic stimulus, such as the seismic survey (Southall *et al.*, 2016). Additionally, L-DEO will shut down the airgun array upon observation of an aggregation of six or more large whales, which would reduce impacts to cooperatively foraging animals. For all habitats, no physical impacts to habitat are anticipated from seismic activities. While SPLs of sufficient strength have been known to cause injury to fish and fish and invertebrate mortality, in feeding habitats, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area and any injury or mortality of prey species would be localized around the survey and not of a degree that would adversely impact marine mammal foraging. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is expected. Given the short operational seismic time near or traversing important habitat areas, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within these areas.

#### *Negligible Impact Conclusions*

The survey will be of short duration (16 days of seismic operations), and the acoustic “footprint” of the survey will be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the survey area. Short-term exposures to survey operations are not likely to significantly disrupt marine mammal behavior, and the potential for longer-term avoidance of important areas is limited. The survey vessel would pass Steller sea lion critical habitat only briefly, and would operate at half volume during the ten percent of tracklines closest to the islands.

The required mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures

via shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the mitigation will be effective in preventing, at least to some extent, potential PTS in marine mammals that may otherwise occur in the absence of the mitigation (although all authorized PTS has been accounted for in this analysis).

NMFS concludes that exposures to marine mammal species and stocks due to L-DEO's survey will result in only short-term (temporary and short in duration) effects to individuals exposed, over relatively small areas of the affected animals' ranges. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the takes to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The activity is temporary and of relatively short duration (16 days);
- The anticipated impacts of the activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of potential PTS that may occur are expected to be very small in number. Instances of potential PTS that are incurred in marine mammals are expected to be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey will be temporary and spatially limited, and impacts to marine mammal foraging will be minimal; and
- The mitigation measures, including visual and acoustic monitoring, shutdowns, and use of the reduced array in certain areas adjacent to Steller sea lion critical habitat are expected to

minimize potential impacts to marine mammals (both amount and severity).

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 total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

#### Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

There are several stocks for which the estimated instances of take appear high when compared to the stock abundance (Table 6), or for which there is no currently accepted stock abundance estimate. These include the humpback whale, fin whale, minke whale, sperm whale, four species of beaked whale, and the offshore stock of killer whales. However, when other qualitative factors are used to inform an assessment of the likely number of individual marine mammals taken, the resulting numbers are appropriately considered small. We discuss these in further detail below.

For all other stocks (aside from those referenced above and discussed below), the authorized take is less than one-third of the best available stock abundance (recognizing that some of those takes may be repeats of the same individual, thus rendering the actual percentage even lower).

Existing stock abundance estimates for humpback whales, based on 2006 surveys, are 10,103 animals for the CNP stock and 1,107 animals for the WNP stock. If all takes are assumed to accrue to the WNP stock, the resulting percentage would not be a small number. Here, we refer to additional pieces of information that demonstrate

the authorized taking to be of no greater than small numbers. First, Wade (2017) provides a more recent estimate of 14,693 whales for the summer (feeding area) abundance in the Aleutian Islands and Bering Sea, which includes the survey area. The total estimated take of humpback whale (1,948 take incidents) would be 13.3 percent of this estimated summer abundance, *i.e.*, less than NMFS' small numbers threshold of one-third of the best available abundance estimate. Second, we expect that only 2.1 percent of whales encountered in this area would be from the WNP DPS. If we consider the WNP DPS to be a reasonable approximation of the historic WNP stock designation, then approximately 41 takes should be expected to accrue to the stock (or approximately 3.7 percent of the 2006 abundance estimate for the WNP stock). This information supports a determination that the take authorization for humpback whales would be of no greater than small numbers, for any stock.

The stock abundance estimates for the fin, minke, beaked, and sperm whale stocks that occur in the survey area are unknown, according to the latest SARs. Therefore, we reviewed other scientific information in making our small numbers determinations for these species. As noted previously, partial abundance estimates of 1,233 and 2,020 minke whales are available for shelf and nearshore waters between the Kenai Peninsula and Amchitka Pass and for the eastern Bering Sea shelf, respectively. For the minke whale, these partial abundance estimates alone are sufficient to demonstrate that the take number of 29 is of small numbers. The same surveys produced partial abundance estimates of 1,652 and 1,061 fin whales, for the same areas, respectively. For the fin whale, we must turn to the only available region-wide abundance estimate. Ohsumi and Wada (1974) provided an estimated North Pacific abundance of 13,620–18,680 whales. Using the lower bound produces a proportion of 12.9 percent.

As noted previously, Kato and Miyashita (1998) produced an abundance estimate of 102,112 sperm whales in the western North Pacific. However, this estimate is believed to be positively biased. We therefore refer to Barlow and Taylor (2005)'s estimate of 26,300 sperm whales in the northeast temperate Pacific to demonstrate that the take number of 43 is a small number. There is no abundance information available for any Alaskan stock of beaked whale. However, the take numbers are sufficiently small (ranging from 9–106) that we can safely

assume that they are small relative to any reasonable assumption of likely population abundance for these stocks. For reference, current abundance estimates for other Pacific beaked whale stocks include 3,044 Mesoplodont beaked whales (California/Oregon/Washington stock), 3,274 Cuvier's beaked whales (CA/OR/WA stock), 2,105 Blainville's beaked whales (Hawaii Pelagic stock), 7,619 Longman's beaked whales (Hawaii stock), and 723 Cuvier's beaked whales (HI Pelagic stock).

For the offshore stock of killer whale, it would be unreasonable to assume that all takes would accrue to this stock (which would result in the take of 47 percent of the population). During surveys from the Kenai Fjords to Amchitka Pass in the central Aleutian Islands, 59 groups totaling 1,038 individual killer whales were seen, including 39 (66 percent) residents, 14 (24 percent) transients, 2 (3 percent) offshore, and 4 (7 percent) unknown (Wade *et al.*, 2003). Based on this information, we assume it relatively unlikely that encountered killer whales will be of the offshore stock, and that take of offshore killer whales, if any, would be of small numbers.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

#### Unmitigable Adverse Impact Analysis and Determination

There is some sealing by indigenous groups in the survey area in the Aleutian Islands. However, given the temporary nature of the planned activities and the fact that all operations would occur more than 3 nmi from shore, the activity would not be expected to have any impact on the availability of the species or stocks for subsistence users. L-DEO conducted outreach to the Aleut Marine Mammal Commission and to the Alaska Sea Otter and Steller Sea Lion Commission to notify subsistence hunters of the planned survey, to identify the measures that would be taken to minimize any effects on the availability of marine mammals for subsistence uses, and to provide an opportunity for comment on these measures. L-DEO received confirmation from the Aleut Marine Mammal Commissioners that there were no concerns regarding the potential effects of the planned survey on the potential availability of marine mammals for subsistence uses. NMFS is

unaware of any other subsistence uses of the affected marine mammal stocks or species that could be 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.

#### National Environmental Policy Act

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), the National Science Foundation prepared an Environmental Analysis (EA) to consider the direct, indirect, and cumulative effects to the human environment from this marine geophysical survey in the Aleutian Islands. NSF's EA was made available to the public for review and comment in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to L-DEO. In compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the NSF's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI). NSF's EA is available at [www.nsf.gov/geo/oce/envcomp/](http://www.nsf.gov/geo/oce/envcomp/), and NMFS' FONSI is available at [www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2](http://www.fisheries.noaa.gov/action/incidental-take-authorization-lamont-doherty-earth-observatory-marine-geophysical-survey-2).

#### Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources (OPR) ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to L-DEO under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of the sei whale, fin whale, blue whale, sperm whale, humpback

whale (Western North Pacific DPS and Mexico DPS), western North Pacific gray whale, and western DPS of Steller sea lion.

#### Authorization

As a result of these determinations, NMFS has issued an IHA to L-DEO for conducting a marine geophysical survey in the Aleutian Islands beginning in September 2020, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 2, 2020.

**Donna S. Wieting,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XA426]

#### Caribbean Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Caribbean Fishery Management Council (CFMC) will hold its 171st public meeting (virtual) to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION.**

**DATES:** The CFMC 171st public meeting (virtual) will be held on September 25, 2020, from 9 a.m. to 3 p.m. The meeting will be at Eastern Day Time.

**ADDRESSES:** You may join the CFMC 171st public meeting (virtual) via GoToMeeting from a computer, tablet or smartphone by entering the following address:

**CFMC September 25, 2020, 9 a.m. to 3 p.m.**

Please join the meeting from your computer, tablet or smartphone. <https://global.gotomeeting.com/join/971749317>  
You can also dial in using your phone.

United States: +1 (408) 650–3123.  
Access Code: 971–749–317.

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In case there are problems with GoToMeeting, and we cannot reconnect