

seven days. The revised deadline for the final results of this review is now March 9, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

#### Scope of the Order

The merchandise subject to this antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this order. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the order. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the order. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the order.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of

the United States (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular materials measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks. The written description remains dispositive.

#### Analysis of Comments Received

All issues raised in this case are addressed in the Issues and Decision Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, Import Administration, to Carole Showers, Acting Deputy Assistant Secretary for Import Administration, dated March 2, 2010 (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room 1117 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Final Results of Sunset Review

The Department has determined that revocation of the antidumping duty order on hand trucks from the PRC would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

| Manufacturers/<br>Exporters/Producers               | Weighted-Average<br>Margin (Percent) |
|---|--------------------------------------|
| Qingdao Taifa Group Co., Ltd. ....                  | 26.49 percent                        |
| True Potential Co. ....                             | 33.68 percent                        |
| Qingdao Huatian Hand Truck Co., Ltd. ....           | 46.48 percent                        |
| Shandong Machinery Import & Export Group Corp. .... | 32.76 percent                        |
| Qingdao Future Tool Inc. ....                       | 32.76 percent                        |
| PRC-wide rate ....                                  | 383.60 percent                       |

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing these results and this notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 2, 2010.

**Carole Showers,**

*Acting Deputy Assistant Secretary for Import Administration.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

**RIN 0648-XU31**

##### Incidental Takes of Marine Mammals During Specified Activities; Replacement and Repair of Fur Seal Research Observation Towers and Walkways on St. Paul Island, Alaska

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

**ACTION:** Notice; proposed Incidental Harassment Authorization; request for comments.

**SUMMARY:** NMFS has received an application from the NMFS, Alaska Region (NMFS AKR) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B harassment, incidental to conducting replacement and repair of northern fur seal research observation towers and walkways on St. Paul Island,

Alaska, from April to June and December, 2010. NMFS has reviewed the application, including all supporting documents, and determined that it is adequate and complete. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to NMFS AKR to take, by Level B harassment only, marine mammals incidental to specified activities within the specified geographic region.

**DATES:** Comments and information must be received no later than April 9, 2010.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is [PR1.0648-XU31@noaa.gov](mailto:PR1.0648-XU31@noaa.gov). NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

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

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

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings

are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization to take small numbers of marine mammals by harassment shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. NMFS has defined “negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [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]. 16 USC 1362(18).

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period for any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

##### **Summary of Request**

On February 2, 2010, NMFS received a letter from NMFS AKR requesting an IHA to authorize the take, by Level B harassment, of small numbers of northern fur seals (*Callorhinus ursinus*) incidental to conducting replacement and repair operations for fur seal research observation towers and walkways on St. Paul Island, Alaska.

NMFS is currently contracting demolition, repair, and select

replacement of northern fur seal observation towers and walkways. The original timing restrictions for this project would have allowed human presence and work on the rookeries only until April 20, 2010, which would have made the incidental take of northern fur seals unlikely. However, the proposed construction season has been extended to the first week of June in order to provide flexibility in the construction schedule to complete the replacement and repair of the observation towers and walkways during a single winter and spring season. NMFS AKR has identified a need to authorize the incidental taking of northern fur seals hauling out on St. Paul Island during their intermittent and early season presence through early June.

The purpose of the replacement and repair operations is to provide safe access for fur seal researchers into the dense breeding aggregations of northern fur seals. Safe access for researchers is required because northern fur seals exhibit strong site fidelity, tenacity, and high levels of aggression within dense aggregations. In addition, non-territorial fur seals are sensitive to human presence within and near breeding areas as a result of visual, auditory, and olfactory stimuli. The observation towers and walkways provide elevated access to observe and count breeding and resting fur seals, reducing stimuli that influence fur seal behavior. Additional information on the construction project is contained below and in the IHA application, which is available upon request (see **ADDRESSES**).

##### **Description of the Proposed Specified Activities**

NMFS AKR is currently contracting demolition, repair and select replacement of northern fur seal research infrastructure on St. Paul Island, Alaska. The objective of this work is to repair 47 fur seal observation towers and their associated walkways within fur seal breeding areas around the island. Prior to the replacement phase of the project, old towers and walkways will need to be demolished. The replacement work will occur at the Reef rookery (i.e., breeding area), if funding is available in future years it will occur at other sites. Seven observation towers will be replaced at the Reef rookery, and the long term plan is to replace and repair the remaining 40 towers at the other rookeries around the island (depending on funding).

Construction crews will be using hand carpentry techniques, possibly supplemented with small gasoline generators, and pneumatic tools. Most construction sites are inaccessible to

vehicles with the exception of all-terrain vehicles and equipment or snow machines, if conditions allow. Crews will be primarily accessing the immediate worksites by foot. The proposed action includes summer and fall construction restrictions to protect northern fur seals from disturbances during the breeding and pup rearing period. Repair and replacement activities will include human presence within the fur seal breeding areas and use of all-terrain and four-wheel drive vehicles to transport personnel, equipment, and materials. Construction crews will use hand and power tools, gas-powered generators, and air compressors. Construction crews will need to demolish and remove old towers and walkways prior to replacement of new structures. Large boulders or uneven terrain will be altered to facilitate construction or access to areas where new foundations are to be placed.

NMFS AKR biologists will begin daily marine mammal monitoring for the presence of fur seals on April 20, 2010 and record the number and response of northern fur seals to the proposed actions until June 7, 2010. Construction activities will cease and demobilization

will begin if the incidental taking of northern fur seals is predicted to exceed that authorized in the IHA prior to June 1, 2010, otherwise all activities will be completed on the rookeries by June 7, 2010.

Additional details regarding the proposed action can be found in the IHA application and Draft Environmental Assessment (EA).

#### Proposed Dates, Duration, and Location of Specified Activity

The research walkways and towers will be repaired and replaced on St. Paul Island, Alaska from January 4, 2010, through June 7, 2010, and again in December, 2010 if necessary and authorized. The proposed dates of the authorization will be from April 20 to June 7, 2010, and December 1 to 31, 2010, which is during the presence of fur seals at the location of the specified activity. See below for information regarding when northern fur seals arrive (i.e., when incidental take starts occurring).

#### Description of Marine Mammals and Habitat Affected in the Proposed Activity Area

Several marine mammal species are known to or could occur in the Bering

Sea off the Alaska coastline (see Table 1 below). The northern fur seal is the only species of marine mammal managed by NMFS that may be present in the project area during the construction project. Northern fur seals are not listed as threatened or endangered under the Endangered Species Act (ESA), but are designated as depleted under the MMPA. Other marine mammal species managed by NMFS that inhabit the Bering Sea, but are not anticipated to occur in the Bering Sea project area during the replacement and repair activities, are listed in Table 1 (below). Polar bears and Pacific walrus also occur in the Bering Sea, but they are not addressed further, since they are managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS).

The marine mammals that occur in the proposed action area belong to four taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), pinnipeds (seals, sea lions, and walrus), and carnivores (polar bears). Table 1 below outlines the marine mammal species and their habitat in the region of the proposed activity area.

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE U.S. BERING SEA OFF OF ALASKA.

| Species   | Habitat                           | ESA <sup>1</sup> |
|---|-----------------------------------|------------------|
| <b>Mysticetes</b>   |                                   |                  |
| Bowhead whale ( <i>Balaena mysticetus</i> )               | Pack ice and coastal              | EN               |
| North Pacific right whale ( <i>Eubalaena japonica</i> )   | Coastal and shelf                 | EN               |
| Gray whale ( <i>Eschrichtius robustus</i> )               | Coastal and lagoons               | NL               |
| Humpback whale ( <i>Megaptera novaeangliae</i> )          | Mainly nearshore waters and banks | EN               |
| Minke whale ( <i>Balaenoptera acutorostrata</i> )         | Shelf and coastal                 | NL               |
| Sei whale ( <i>Balaenoptera borealis</i> )                | Primarily offshore and pelagic    | EN               |
| Fin whale ( <i>Balaenoptera physalus</i> )                | Slope, mostly pelagic             | EN               |
| Blue whale ( <i>Balaenoptera musculus</i> )               | Pelagic and coastal               | EN               |
| <b>Odontocetes</b>  |                                   |                  |
| Killer whale ( <i>Orcinus orca</i> )                      | Widely distributed                | NL               |
| Beluga whale ( <i>Delphinapterus leucas</i> )             | Coastal, ice edges                | NL               |
| Baird's beaked whale ( <i>Berardius bairdii</i> )         | Pelagic                           | NL               |
| Stejneger's beaked whale ( <i>Mesoplodon stejnegeri</i> ) | Likely pelagic                    | NL               |
| Harbor porpoise ( <i>Phocoena phocoena</i> )              | Coastal, inland waters            | NL               |
| Dall's porpoise ( <i>Phocoenoides dalli</i> )             | Slope, offshore waters            | NL               |
| <b>Pinnipeds</b>  |                                   |                  |
| Northern fur seal ( <i>Callorhinus ursinus</i> )          | Pelagic, breeds coastally         | NL               |

TABLE 1. THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED SSTUDY AREA IN THE U.S. BERING SEA OFF OF ALASKA.—Continued

| Species   | Habitat                     | ESA <sup>1</sup>  |
|---|-----------------------------|---|
| Steller sea lion ( <i>Eumetopias jubatus</i> )          | Mostly pelagic, high relief | EN  |
| Bearded seal ( <i>Erignathus barbatus</i> )             | Ice                         | NL  |
| Spotted seal ( <i>Phoca largha</i> )                    | Pack ice                    | Proposed T (Southern DPS)<br>NL (Okhotsk and Bering DPSs) |
| Ringed seal ( <i>Phoca hispida</i> )                    | Landfast and pack ice       | NL  |
| Ribbon seal ( <i>Histiophoca fasciata</i> )             | Landfast and pack ice       | NL  |
| Pacific harbor seal ( <i>Phoca vitulina richardsi</i> ) | Coastal                     | NL  |
| Pacific Walrus ( <i>Odobenus rosmarus divergens</i> )   | Ice, coastal                | NL  |
| <b>Carnivores</b>                                       |                             |   |
| Polar bear ( <i>Ursus maritimus marinus</i> )           | Ice, coastal                | T   |

<sup>1</sup> U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed

Not all of these species (listed in Table 1 above) are expected to be harassed from the described proposed activities. Because the activities are occurring on land, only northern fur seals are expected to be disturbed by the project.

Northern fur seals (*Callorhinus ursinus*) are likely to be found within the activity area. Northern fur seals are seasonal residents on St. Paul Island, and may be found on the breeding and resting areas around the island from late April until early December.

Adult males are the most likely group of northern fur seals to be encountered on St. Paul during the spring of 2010. By June 1, 2010, NMFS estimates about 50 percent of the maximum count of adult males will be on all the St. Paul Island breeding areas of 4,976 adult male northern fur seals. NMFS' estimate includes territorial males, and non-territorial males.

In addition, NMFS estimates intermittent arrival and departure of few sub-adult males during the winter and spring. Most sub-adult male seals begin arriving during the last week of May resulting in a few tens to a hundred seals at any of the hauling grounds on St. Paul Island (Gentry, 1981)

#### Northern Fur Seal

Northern fur seals occur from southern California north to the Bering Sea and west to the Okhotsk Sea and Honshu Island, Japan. During the summer breeding season, most of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals on rookeries in Russia, on Bogoslof Island in the southern Bering Sea, and on San

Miguel Island off Southern California (Lander and Kajimura, 1982; NMFS, 1993). This species may temporarily haul-out onto land at other sites in Alaska, British Columbia, and on islets along the coast of the continental U.S., but generally do so outside of the breeding season (Fiscus, 1983).

Northern fur seals are colonial breeding pinnipeds that exhibit strong site fidelity and currently breed on a few islands in the North Pacific Ocean and Bering Sea. Adult male fur seals, about three to five times larger than females, arrive at rookeries prior to the late June/July breeding season and defend territories within the rookery. Beginning in mid-June the rookeries are occupied by breeding females, who within a few days give birth and begin nursing their single pup. Lactating females cycle between on shore attendance and at-sea foraging trips during the nursing period (July to November).

NMFS designated the Pribilof Islands northern fur seal population depleted on June 17, 1988 (53 FR 17888) because it declined to less than 50 percent of levels observed in the late 1950s and no compelling evidence suggested that the northern fur seal carrying capacity of the Bering Sea had changed substantially since the late 1950s. Towell and Ream (2008) report that the 2008 pup production estimate for St. Paul Island was 6.6 percent less than the estimate in 2006. The 2008 pup production estimate for St. George Island was 6.4 percent greater than the estimate in 2006. Since the depleted designation in 1988 pup production on St. Paul Island has declined by 40

percent (171,610 pups born to 102,674) and on St. George Island by 27 percent (24,280 pups born to 18,160).

Male northern fur seals arrive on all of their breeding islands in reverse proportion to their age. That is, the oldest seals arrive first followed by progressively younger seals. Thus adult males nine years old and older arrive as early as late April and persist intermittently at first and then permanently (for territorial males) for the duration of their tenure on the island which generally ranges for about 30 to 60 days (Gentry, 1998). All non-territorial males (i.e., younger than 7 years old) arrive on the island and cycle between fasting and resting on shore and foraging trips at sea from June through November (Sterling and Ream, 2004). Fur seals can be observed on and near St. Paul Island in nearly every month of the year, but the probability of encountering a hauled-out fur seal in any month from December until April is highly uncertain and near zero for any particular day.

Two separate stocks of northern fur seals are recognized within U.S. waters, an Eastern Pacific stock and a San Miguel Island stock. The most recent estimate for the number of fur seals in the Eastern Pacific stock, based on pup counts from 2002 on Sea Lion Rock, from 2006 on the Pribilof Islands, and from 2005 on Bogoslof Island is 665,500 animals. The minimum population estimate is 654,437 animals; this estimate includes the first pup counts on Bogoslof Island in more than 5 years and does not indicate population increase.

NMFS anticipates that no northern fur seals will be injured, seriously injured,

or killed during the replacement and repair activities with incorporation of the described proposed mitigation and monitoring measures. Because of the proposed mitigation and monitoring requirements discussed in this document, NMFS and NMFS AKR believes it is highly unlikely that the proposed activities would have the potential to injure (Level A harassment), or cause serious injury, or mortality of northern fur seals; however, they may temporarily leave or avoid the area where the proposed construction activities may occur, thus resulting in Level B harassment. NMFS AKR has requested the incidental take of 579 adult male northern fur seals (9,785 times) and 1,000 sub-adult northern male fur seals (one time) or 1,579 total individual northern fur seals for the proposed action. The requested take is approximately 0.24 percent of the estimated minimum (654,437) Eastern Pacific stock. NMFS has determined that the number of requested incidental takes for the proposed action is small relative to population estimates of northern fur seals.

Further information on the biology and local distribution of these species and others in the region can be found in NMFS AKR's application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: <http://www.nmfs.noaa.gov/pr/species/>.

#### Potential Effects of Activities on Marine Mammals

All anticipated takes likely to occur incidental to the proposed construction activities would be Level B harassment

(as defined in 50 CFR 216.3), involving short-term, temporary changes in behavior. Incidental harassment may result if hauled-out animals move away from the field crew personnel. For the purpose of estimating the number of pinnipeds taken by these activities, NMFS assumes that pinnipeds that move or change the direction of their movement in response to the presence of field crew personnel are taken by Level B harassment. Animals that merely raise their head and look at the field crew personnel are not considered to have been taken.

Some adult seals may depart, but NMFS AKR anticipates most will alter their activity budgets due to stimuli related construction. NMFS used the 2006 adult male counts because they were available and partitioned by section, and because the continued decline of northern fur seals provided us with a conservative (i.e., biased high) estimate. NMFS estimates about five percent of the adult males, less than one percent of sub-adult males, and no females or pups on St. Paul Island will be exposed to the proposed construction activities. NMFS anticipates sub-adult seals will be displaced from their resting areas if encountered during construction. The NMFS AKR anticipates there will be no significant impact on the species or stock of northern fur seals from the proposed construction activity on the rookeries prior to and after the breeding season.

Given the considerations noted above, and the small proportion of the total northern fur seal population potentially disturbed by the proposed construction activity, the effects of operations are expected to be limited to short-term and

localized displacement (behavioral changes) within the work sites involving relatively small numbers of seals. The effects of the proposed construction operations fall within the MMPA definition of Level B harassment. The impacts of the proposed construction activities are expected to be negligible for the northern fur seal stock and populations.

#### Potential Effects of Activities on Marine Mammal Habitat

The NMFS AKR does not anticipate any negative impact on northern fur seal habitat from the demolition, repair, and replacement of observation towers and walkways on St. Paul Island. These structures have been located in nearly the same areas for at least 50 years at some locations and northern fur seals continue to use the habitat around the structures. The demolition and removal of condemned structures will restore some small areas of fur seal habitat. The replacement and repair of observation towers and walkways will likely result in no net change or modification to marine mammal habitat. Consequently, construction activities are anticipated to have a negligible impact on the local northern fur seal population and their habitat.

#### Number of Marine Mammals Expected to be Incidentally Taken by the Proposed Activity

The NMFS AKR is requesting take, by Level B harassment only, of male northern fur seals. The method of taking will be from a combination of human presence, scent, and airborne construction noise.

TABLE 2. SUMMARY OF INCIDENTAL TAKING BY HARASSMENT OF NORTHERN FUR SEALS DURING CONSTRUCTION ACTIVITIES ON ST. PAUL ISLAND

|                              | Prior to April 25, 2010 | Week 1                 | Week 2                    | Week 3                      | Week 4                      | week 5                      | Total                       |
|------------------------------|-------------------------|------------------------|---------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| Adult Male Northern Fur Seal | 0                       | 8 seals taken 58 times | 115 seals taken 811 times | 232 seals taken 1,621 times | 463 seals taken 3,242 times | 579 seals taken 4,053 times | 579 seals taken 9,785 times |
| Sub-adult Male Fur Seal      | 50 seals taken once     | 50 seals taken once    | 150 seals taken once      | 200 seals taken once        | 250 seals taken once        | 300 seals taken once        | 1,000 seals taken once      |

Most adult male northern fur seals will be incidentally taken by harassment multiple times. NMFS AKR anticipates approximately 230 of the 579 adult males will be taken once. These single takes by harassment are of the estimated non-territorial adult males predicted to be present and will likely depart due to

the noise, presence or scent of the construction activities on the rookery. NMFS estimates the remaining 349 adult male northern fur seals are territorial at Reef rookery on St. Paul Island during the five week period beginning late April, 2010 and will not depart. NMFS predicts these territorial

males may change the time spent in certain behaviors due to the presence, noise, or scent due to construction activities on the rookery.

The number of incidental takes by harassment was derived from 2006 adult male counts from the National Marine Mammal Laboratory (NMML) from Reef rookery (Fowler *et al.*, 2006) and was

corrected based on the timing of arrival curve from Gentry (1998). Rookeries are divided into sections allowing easier tabulation of counts and the maximum counts in each section have been divided by the percentage estimated on land for each week in Tables 3a to 3e

(below). NMFS summed the daily take estimates into weekly bins (Table 3a to 3e) because few animals were predicted on land in late April and early May, but those few animals would likely to be taken repeatedly during the week and every subsequent week. Table 3 shows

fractional daily taking within each section, summed for the week, and rounded up into Table 2. NMFS estimates an additional 1,000 sub-adult male seals may be encountered during the construction or repair activities at Reef or other rookeries (Table 2).

TABLE 3A. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE LAST WEEK OF APRIL. ESTIMATE BASED ON ONE PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

| Class Bull | Section |      |      |      |      |      |      |      |      |      |      |
|------------|---------|------|------|------|------|------|------|------|------|------|------|
|            | 1       | 2    | 3    | 4    | 5    | 6    | 7    | 8    | 9    | 10   | 11   |
| 2          | 0.13    | 0.26 | 0.27 | 0.1  | 0.22 | 0.21 | 0.05 | 0.27 | 0.22 | 0.11 | 0.03 |
| 3          | 0.48    | 0.81 | 0.63 | 0.46 | 0.67 | 0.7  | 0.01 | 0.66 | 0.37 | 0.28 | 0.04 |
| 5          | 0.08    | 0.27 | 0.4  | 0.47 | 0.31 | 0.13 | 0.15 | 0.31 | 0.34 | 0.72 | 1.42 |

Total Taking by Harassment Week 1: 57.9

TABLE 3B. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE FIRST WEEK OF MAY. ESTIMATE BASED ON 10 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

| Class Bull | Section |     |     |     |     |     |     |     |     |     |      |
|------------|---------|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
|            | 1       | 2   | 3   | 4   | 5   | 6   | 7   | 8   | 9   | 10  | 11   |
| 2          | 1.3     | 2.6 | 2.7 | 1   | 2.2 | 2.1 | 0.5 | 2.7 | 2.2 | 1.1 | 0.3  |
| 3          | 4.8     | 8.1 | 6.3 | 4.6 | 6.7 | 7   | 0.1 | 6.6 | 3.7 | 2.8 | 0.4  |
| 5          | 0.8     | 2.7 | 4   | 4.7 | 3.1 | 1.3 | 1.5 | 3.1 | 3.4 | 7.2 | 14.2 |

Total Taking by Harassment Week 2: 810.6

TABLE 3C. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE SECOND WEEK OF MAY. ESTIMATE BASED ON 20 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

| Class Bull | Section |      |      |     |      |     |     |      |     |      |       |
|------------|---------|------|------|-----|------|-----|-----|------|-----|------|-------|
|            | 1       | 2    | 3    | 4   | 5    | 6   | 7   | 8    | 9   | 10   | 11    |
| 2          | 2.6     | 5.2  | 5.4  | 2   | 4.4  | 4.2 | 1   | 5.4  | 4.4 | 2.2  | 0.6   |
| 3          | 9.6     | 16.2 | 12.6 | 9.2 | 13.4 | 14  | 0.2 | 13.2 | 7.4 | 5.6  | 0.8   |
| 5          | 1.6     | 5.4  | 8    | 9.4 | 6.2  | 2.6 | 3   | 6.2  | 6.8 | 14.4 | 28.42 |

Total Taking by Harassment Week 3: 1621.2

TABLE 3D. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE THIRD WEEK OF MAY. ESTIMATE BASED ON 40 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

| Class Bull | Section |      |      |      |      |     |     |      |      |      |      |
|------------|---------|------|------|------|------|-----|-----|------|------|------|------|
|            | 1       | 2    | 3    | 4    | 5    | 6   | 7   | 8    | 9    | 10   | 11   |
| 2          | 5.2     | 10.4 | 10.8 | 4    | 8.8  | 8.4 | 2   | 10.8 | 8.8  | 4.4  | 1.2  |
| 3          | 19.2    | 32.4 | 25.2 | 18.4 | 26.8 | 28  | 0.4 | 26.4 | 14.8 | 11.2 | 1.6  |
| 5          | 3.2     | 10.8 | 16   | 18.8 | 12.4 | 5.2 | 6   | 12.4 | 13.6 | 28.8 | 56.8 |

Total Taking by Harassment Week 4: 3242.4

TABLE 3E. ESTIMATED DAILY TAKE OF ADULT MALE NORTHERN FUR SEALS ON REEF ROOKERY FOR THE LAST WEEK OF MAY. ESTIMATE BASED ON 50 PERCENT OF THE MAXIMUM 2006 BULL COUNTS.

| Class Bull | Section |      |      |      |      |      |     |      |      |     |     |
|------------|---------|------|------|------|------|------|-----|------|------|-----|-----|
|            | 1       | 2    | 3    | 4    | 5    | 6    | 7   | 8    | 9    | 10  | 11  |
| 2          | 6.5     | 13   | 13.5 | 5    | 11   | 10.5 | 2.5 | 13.5 | 11   | 5.5 | 1.5 |
| 3          | 24      | 40.5 | 31.5 | 23   | 33.5 | 35   | 0.5 | 33   | 18.5 | 14  | 2   |
| 5          | 4       | 13.5 | 20   | 23.5 | 15.5 | 6.5  | 7.5 | 15.5 | 17   | 36  | 71  |

Total Taking by Harassment Week 5: 4053

NMFS and NMFS AKR estimate that the incidental “take by harassment” could be up to 579 adult male northern fur seals taken 9,785 times and 1,000 sub-adult male northern fur seals taken once during the proposed action.

### Proposed Mitigation

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

Northern fur seals are the only marine mammal species managed by NMFS expected to be present in the project area during the planned construction activities. The construction season has been chosen based on the minimum likelihood of encountering breeding and nursing northern fur seals. The amount of work and weather conditions during the winter season necessitates providing some contingency arrangements for work to be completed when few if any fur seals are found on land. In addition, the outlying periods requested are prior to the arrival and after the departure of the most sensitive fur seals (i.e., adult females and unweaned pups). Gentry (1998) experimented with complete displacement in early June of territorial males from their terrestrial sites. He found that over 80 percent of adult males returned with in seven hours to their original territory site with less aggression than required to originally secure the site. Thus territorial adult males are highly resistant to disturbance at the time of year NMFS AKR is requesting authorization for incidental harassment. Some individual territorial males were so resistant to harassment that it required four to six people with

poles and noisemakers to move them from their sites.

Thus, the combination of a winter and spring construction season along with incidental harassment of small numbers of adult and sub-adult male northern fur seals will minimize the potential for adverse impacts to the population and habitat. The habitat is further protected because the ground is frozen and resistant to erosion and degradation due to vehicle traffic. In addition to the mitigation described above, NMFS AKR will also limit field personnel to approaching sites cautiously, choosing a route that minimizes the potential for disturbance of pinnipeds; and after each site visit, the site will be vacated as soon as possible so that it can be re-occupied by pinnipeds that may have been disturbed. The implementation of a monitoring and mitigation program is expected by NMFS to achieve the least practicable adverse impact upon the affected species or stock.

### Proposed Monitoring and Reporting

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

NMFS AKR will begin marine mammal monitoring at Reef, Gorbach, and Ardiguen breeding areas to identify and count northern fur seals on land, their response to the presence and absence of construction activities and the timing of arrival beginning the last week of April. In addition to counts of northern fur seals monitoring will also record the type and duration of construction activities at each site

where northern fur seals are identified to evaluate the construction actions potential contribution to the responses observed. Gorbach and Ardiguen breeding areas will provide control areas with no construction activities to compare the timing of arrival and response of male northern fur seals at Reef. NMFS AKR will consider before-after/control-impact (see Underwood, 1994) study design in the final monitoring plan, method and analysis. NMFS AKR will have monitors check the site every morning before the arrival of field crew personnel for seal presence and provide the best route. In addition, they would be able to complete a “before” count that could provide a baseline for estimating incidental take.

Information recorded by observers will include: species counts, life history stage (e.g., adult, sub-adult, pup, etc.) numbers of observed disturbances (e.g., flushed into the water; moving more than 1 m [3.3 ft], but not into the water; becoming alert and moving, but do not move more than 1 m; and changing the direction of current movement), descriptions of the disturbance behaviors and responses during construction activities, closest point of approach to field crew personnel, as well as the date, time, and weather conditions. Observations of stampeding, other unusual behaviors, numbers, or distributions of pinnipeds at St. Paul Island will be reported to NMFS’ NMML so that any potential follow-up observations can be conducted by the appropriate personnel. Weather observations should be recorded during activities and observations as they have strong influence on the presence/absence and behavior of pinnipeds and propagation of human scent. In addition, any chance observations of tag-bearing pinnipeds (including carcasses) as well as any rare or unusual species of marine mammals will be reported to NMFS.

If at any time injury, serious injury, or death of any marine mammal occurs that may be a result of the proposed

construction activities, NMFS AKR will suspend construction activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Alaska Regional Administrator and NMFS Office of Protected Resources, within 24 hours. NMFS AKR will submit a draft report to NMFS within 90 days of completing the replacement and repair activities. The monitoring report would contain a summary of information gathered pursuant to the monitoring and mitigation requirements set forth in the IHA, including detailed descriptions of observations of any marine mammal, by species, number, age class, and sex, whenever possible, that is sighted in the vicinity of the proposed project area; description of the animal's observed behaviors, and the activities occurring at the time. The location and time of each animal sighting will also be included. A final report must be submitted to the Regional Administrator and Chief of the Permits, Conservation, and Education Division within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

#### **Encouraging and Coordinating Research**

Coordination and collaboration with Tribal ECO will be accomplished to partner with and potentially utilize local sentinels currently implementing a long-term monitoring program on St. Paul Island. Dr. Paul Wade at the NMML has conducted work at this site related to offshore observations of killer whales, and NMFS AKR will coordinate with Dr. Wade if necessary. Northern fur seal researchers at the NMML and North Pacific Universities Marine Mammal Consortium do not begin their work until the arrival of adult females in late June, but NMFS AKR will contact the Principal Investigators to ensure their plans have not changed and whether their research may overlap with this project.

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

The regulations at CFR 216.103 states that "negligible impact is 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."

Impacts from the proposed activities on northern fur seals and their habitat are expected to be temporary and occur to a small, localized population of marine mammals. The effects on the habitat from the proposed construction activities are not expected to have an effect on recruitment or survival rates. Due to the limited duration, and monitoring and mitigation measures described above, which include seasonal restrictions, takes will not occur during times of significance for marine mammals. The estimated incidental "take by harassment" of 579 adult male and 1,000 sub-adult male (1,579 total individuals) northern fur seals during the proposed action is approximately 0.24 percent of the estimated minimum (654,437 individuals) population of the Eastern Pacific stock.

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 preliminarily finds that NMFS AKR's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the construction activities would have a negligible impact on the affected species or stocks of marine mammals.

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

Under the MMPA, NMFS must determine that an activity would not have an unmitigable adverse impact on the subsistence needs for marine mammals. While this includes usage of both cetaceans and pinnipeds, the primary impact by construction activities is expected to be impacts from replacement and repair of fur seal research observation towers and walkways on northern fur seals. In 50 CFR 216.103, NMFS has defined unmitigable adverse impact as:

An impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Northern fur seals are not allowed to be harvested on land by Alaska Natives

outside the harvest season described at 50 CFR 216.72. And 50 CFR 216.72(c)(1) states that "no fur seal may be taken on the Pribilof Islands before June 23 of each year." Therefore there will be no impact on subsistence use of northern fur seals. Steller sea lion subsistence hunting occurs during the winter and spring on the Reef Peninsula. Steller sea lion subsistence hunting does not occur at the tower and walkway sites on Reef Rookery. Hunting effort is primarily located at Gorbach and Ardiguen Rookeries as well as the bluffs along the east shore to the north of Reef Rookery. Other sea lion hunting areas are not typically associated with fur seal towers and walkways and therefore would not be affected.

NMFS AKR has discussed the potential overlap between the construction season and location with subsistence hunting with the Tribal Government of St. Paul Island's Ecosystem Conservation Office (Tribal ECO) staff. The NMFS AKR has ongoing communication with Steller sea lion hunters through the Tribal Government of St. Paul Island. As part of the cooperative management agreement between NMFS and the Tribal Government of St. Paul under section 119 of the MMPA, NMFS regularly communicates agency project plans and subsistence needs and activities. Most subsistence activities occur during the summer per the subsistence harvest regulations at 50 CFR 216 subpart F. Annual reports submitted to NMFS of subsistence marine mammal harvests indicate most hunting occurs at Northeast Point. Winter subsistence harvests occur at many locations surrounding St. Paul Island and are not concentrated at any locations where tower or walkway work would be conducted.

The number of individual northern fur seals likely to be impacted by construction operations is expected to be relatively low. With the proposed monitoring and mitigation measures described above, which include seasonal restrictions, the construction operations are not expected to cause seals to abandon/avoid subsistence hunting areas, directly displace subsistence users, or place physical barriers between the marine mammals and the subsistence hunters. Effects on most individual seals are expected to be limited to localized and temporary displacement (Level B harassment). The taking by harassment is not expected to result in an unmitigable adverse impact on the availability of such species for taking for subsistence uses.



### Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described proposed construction activities and the accompanying IHA are not anticipated to have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Consequently, NMFS has determined that a Section 7 consultation is not required. The northern fur seal, which is the only species of marine mammal under NMFS jurisdiction likely to occur in the proposed action area, is not listed under the ESA.

### National Environmental Policy Act (NEPA)

With its complete application, NMFS AKR prepared a draft final Environmental Assessment for Issuance of an Incidental Harassment Authorization for Replacement and Repair of Northern Fur Seal Observation Towers and Walkways on St. Paul Island, Alaska, which analyzed the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or after review and evaluation of NMFS AKR EA for consistency with regulations published by the Council on Environmental Quality (CEQ) and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing NEPA, adopt the NMFS AKR EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI). A copy of the draft final EA will be available upon request (see **ADDRESSES**).

### Preliminary Determinations

Based on NMFS AKR's application, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described replacement and repair operations will result, at most, in a temporary modification in behavior by small numbers of northern fur seals. The effect of the proposed construction activities is expected to be limited to short-term and localized behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the population size, potentially taken by harassment is expected to be small. In addition, no take by injury (Level A harassment), serious injury, and/or death is

anticipated or authorized, and take by Level B harassment will be at the lowest level practicable due to incorporation of the proposed monitoring and mitigation measures mentioned previously in this document. NMFS has further preliminarily determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. Also, the proposed construction project is not expected to result in an unmitigable adverse impact on subsistence uses of this species.

### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to NMFS AKR for the harassment of small numbers (based on populations of the species and stock) of northern fur seals incidental to construction operations on St. Paul Island, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 2, 2010.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XU91**

### Mid-Atlantic Fishery Management Council; Atlantic Mackerel, Butterfish, Atlantic Bluefish, Spiny Dogfish, Summer Flounder, Scup, Black Sea Bass, Tilefish, Surfclam, and Ocean Quahog Annual Catch Limits and Accountability Measures Omnibus Amendment

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

**ACTION:** Supplemental Notice of Intent to prepare an environmental assessment (EA); request for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EA in accordance with the National Environmental Policy Act (NEPA) to assess potential effects on the human environment of alternative measures to address the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements for annual catch limits (ACLs) and accountability measures (AMs) in an

Omnibus Amendment to the fishery management plans (FMPs) for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs.

This supplemental notice is to alert the interested public of the Council's intent to change the level of NEPA analysis from an Environmental Impact Statement (EIS) to an EA. In addition, this supplement announces an opportunity for the public to comment on the change.

**DATES:** Written comments must be received on or before 5 p.m., EST, on March 25, 2010.

**ADDRESSES:** Written comments may be sent by any of the following methods:

- E-mail to the following address: [0648-XU91@noaa.gov](mailto:0648-XU91@noaa.gov);
- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. Mark the outside of the envelope "Omnibus Amendment: National Standard 1 Requirements Comments"; or
- Fax to (302) 674-5399.

Questions about this action may be directed to the Council office at the previously provided address, or by request to the Council by telephone (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 800 North State Street, Suite 201, Dover, DE 19901, (telephone 302-674-2331).

**SUPPLEMENTARY INFORMATION:** On March 24, 2009, the Council announced its intention to prepare, in cooperation with NMFS, an EIS in accordance with NEPA to assess potential effects on the human environment of alternative measures to address the new Magnuson-Stevens Act requirements for ACLs and AMs (74 FR 12314). The Council has been in the process of developing an Omnibus Amendment to the FMPs for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs to address ACL and AM requirements since 2008.

During the development that has occurred to date for the Omnibus Amendment, three public scoping hearings have been conducted, and the Council has conducted numerous Fishery Management Action Team (FMAT) Omnibus Amendment Committee, and full Council meetings, wherein approaches and potential alternatives have been discussed. These discussions have included public participation. The development process