

Additional mitigation measures that will significantly lower potential impacts to marine mammals (and sea turtles) include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hour before sunset to ensure adequate observation of marine mammals in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the radius of the caution zone; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or manatee; (5) matching, to the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, at least 30 minutes before and continue for 30 minutes after each detonation to ensure that there are no dolphins, manatees or sea turtles in the area at the time of detonation.

#### Monitoring Program

The Corps proposes to implement a aerial and vessel-based observer monitoring programs. The vessel-based observer program will take place in a circular area at least three times the radius of the above described Caution Zone (called the watch zone). Detonation will not occur if a marine mammal or sea turtle is sighted within the safety zone and will be delayed until the animal(s) move(s) out of the safety zone on its own volition. The aerial and vessel-based marine mammal watch is proposed to be conducted for at least a half hour before and after the time of each detonation.

#### Reporting

NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the proposed work has started. This report will include the status of the work being undertaken, marine mammals sighted during the monitoring period, any behavioral observations made on bottlenose dolphins and any delays in detonation due to marine mammals being within the safety zone.

In the unlikely event a marine mammal or sea turtle is injured or killed during blasting, the Contractor shall

immediately notify the NMFS Regional Office.

#### Endangered Species Act

Under section 7 of the ESA, the Corps completed consultation with the USFWS on December 14, 1998 for this project. The USFWS concluded that the work would not likely jeopardize the continued existence of the manatee, if standard manatee protection conditions were implemented. The Corps reinitiated consultation with the USFWS by letter dated July 5, 2000, because blasting was identified as a component of the project. On July 24, 2000 and September 5, 2000, the USFWS provided the Corps with recommendations for protecting manatees while conducting blasting operations. These recommendations have been incorporated into the project. Because the proposed issuance of this IHA to the Corps is a federal action under section 7 of the ESA that might affect sea turtles (a listed species under NMFS' jurisdiction), NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on whether or not to issue an IHA.

#### National Environmental Policy Act

The Corps prepared an Environmental Assessment (EA) on the Navigation Study for Tampa Harbor-Alafia River, Florida in September 2000 and made a finding of no significant impact on October 11, 2000. A copy of this document is available for viewing (see ADDRESSES). NMFS is reviewing this EA in relation to the Corps' application and will determine the appropriate action to take under NEPA prior to making a determination on the issuance of an IHA.

#### Preliminary Conclusions

NMFS has preliminarily determined that the Corps' proposed action, including mitigation measures to protect marine mammals, should result, at worst, in the temporary modification in behavior by bottlenose dolphins resulting from temporary hearing impairment (TTS), but may also include temporarily vacating the Alafia River area to avoid the blasting activity and the potential for minor visual and acoustic disturbance from dredging and detonations. Because this project will affect at most a few dolphins due to its local impact, short time duration, and implementation of effective vessel-based and aerial monitoring programs, NMFS believes that only a small number of dolphins may be taken by Level B

harassment and this is expected to have only a negligible impact on the affected species or stocks of bottlenose dolphins. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

#### Proposed Authorization

NMFS proposes to issue an IHA to the Corps for the harassment of small numbers of bottlenose dolphins incidental to expanding and deepening the Alafia River Navigation Channel in Tampa Harbor, FL, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

#### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see ADDRESSES).

Dated: May 18, 2004.

**Laurie K. Allen,**

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

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 032904C]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

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

**ACTION:** Notice of issuance of an incidental take authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to The Boeing Company (Boeing) to take marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable

Launch Vehicle (EELV) at south Vandenberg Air Force Base, CA (VAFB).

**DATES:** Effective from May 20, 2004, through May 19, 2005.

**ADDRESSES:** A copy of the IHA and the application are available by writing to Mr. P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications).

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, (301) 713–2322, ext. 163 or Monica DeAngelis, (562) 980–3232.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission for incidental takings may be granted if NMFS finds that the taking will have no more than 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 and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 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. 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”].

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

##### Summary of Request

On December 12, 2003, NMFS received an application from Boeing requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. In addition, northern elephant seals (*Mirounga angustirostris*) and northern fur seals (*Callorhinus ursinus*) may also be incidentally harassed but in even smaller numbers. Incidental Harassment Authorizations (IHAs) were issued to Boeing on May 15, 2002 (67 FR 36151, May 23, 2002) and on May 20, 2003 (68 FR 36540, June 18, 2003) each for a one-year period. The harbor where activities will take place is on south VAFB approximately 2.5 mi (4.02 km) south of Point Arguello, CA and approximately 1 mi (1.61 km) north of the nearest marine mammal pupping site (i.e., Rocky Point).

##### Comments and Responses

A notice of receipt of the Boeing application and proposed IHA was published in the **Federal Register** on April 7, 2004 (69 FR 18353). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission) and from one individual.

*Comment 1:* The Commission states that NMFS’ preliminary determinations are reasonable provided that all reasonable measures will be taken to ensure the least practicable impact on the subject species and the require mitigation and monitoring activities be carried out as described in the April 7, 2004 **Federal Register** notice and the subject application.

*Response:* NMFS appreciates the Commission’s comment and is requiring all mitigation and monitoring activities described in Boeing’s application. NMFS is also requiring Boeing to take all reasonable measures to ensure the least practicable impact on the species, such as turning on lighting before dusk and initiating activities before dusk if Boeing will be conducting harbor activities at night.

*Comment 2:* An individual stated that they oppose the proposal for harbor activities on Vandenberg Air Force Base because there is no explanation of reef enhancement in the **Federal Register** notice.

*Response:* To mitigate the unavoidable removal of kelp habitat within the dredge footprint, Boeing, the U.S. Air Force, and regulatory agencies have agreed that 150 tons (136.08 metric tons) of rocky substrate will be placed in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the U.S. Army Corps of Engineers following the 1984 and 1989 dredgings and has resulted in the growth of a lush kept bed adjacent to this sandy area. The location is outside of the dredge footprint and navigation channel in a protected environment. The breakwater will help protect the kept from storms and surges that might tear young kelp plants from the substrate. The substrate will be in the form of approximately 150 sharp-faced boulders, each with a diameter of approximately 2 ft (0.61 m) and a weight of approximately 1 ton (0.91 metric ton). The boulders will be brought in by truck from an off-site quarry, loaded by crane onto a small barge at the wharf, and pushed by tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them randomly into the sandy area. This information is also contained in the Boeing application, which could be found at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications)

*Comment 3:* The individual also states that many population estimates are unreliable and untruthful and are political estimates made to support something that humans want to do.

*Response:* Monitoring is conducted by biologically trained, on-site individuals, approved by the NMFS Southwest Regional Office. Baseline observations are made prior to each day’s activities, recording the species present, numbers, location(s), and behavior of the marine mammals in the area. Observations are also conducted during and after each day’s activities. NMFS does not believe

that past data reporting the species and numbers have ever been doctored to justify conducting any activities.

### Specified Activities

*Delta Mariner* off-loading operations and associated cargo movements will occur a maximum of three times per year. The *Delta Mariner* is a 95.1-m (312-ft) long, 25.6-m (84-ft) wide steel hull ocean-going vessel capable of operating at a 2.4-m (8-ft) draft. For the first few visits to the south VAFB harbor, tug boats will accompany the *Delta Mariner*. Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering into position and the cargo bay door when it becomes disengaged. Removal of the common booster core (CBC) from the *Delta Mariner* requires use of an elevating platform transporter. An additional source of noise with sound levels measured at a maximum of 82 dB A-weighted (re 20 microPascals at 1 m) 6.1 m (20 ft) comes from the engine exhaust (Acentech, 1998). Procedures require two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. At 60.9 m (200 ft) away, the sound level of the EPT horn ranged from 62–70 dB A-weighted. Containers containing flight hardware items will be towed off the *Delta Mariner* by a tractor tug that generates a sound level of approximately 87 dB A-weighted at 15.2 m (50 ft) while in operational mode. Total time of *Delta Mariner* docking and cargo movement activities is estimated at between 14 and 18 hours in good weather.

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing up to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Measured sound levels from this equipment are roughly equivalent to those estimated for the wharf modification equipment: 43 to 81 dB A-weighted at 76.2 m (250 ft). Dredge operations, from set-up to tear-down, would continue 24 hours a day for 3 to 5 weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule. A more detailed description of the work proposed for 2004 is contained in the application which is available upon request (see **ADDRESSES**) and in the Final US Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at

Vandenberg Air Force Base (ENSR International, 2001).

### Habitat and Marine Mammals Affected by the Activity

#### *Pacific Harbor Seals*

The marine mammal species most likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney et al., 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals on VAFB is now estimated to be 1,118 (500 hauled-out on south VAFB) based on sighting surveys and telemetry data (SRS Technologies, 2001).

The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 76.2 m (250 ft) west of the south VAFB harbor and on rocks outside the harbor breakwater where Boeing will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement activities. The maximum number of seals present during past dredging of the harbor was 23, with an average of seven seals sighted per observation. The harbor seal pupping site closest to south VAFB harbor is at Rocky Point, approximately 1.6 km (1 mi) north of the harbor.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure

thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

#### *California Sea Lions*

During the wharf modification activity in June-July 2002, California sea lions were observed hauling out in small numbers. Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, Boeing has included sea lions in their IHA request.

California sea lions range from British Columbia to Mexico. The minimum U.S. population estimate for California sea lions is 109,854 individuals. Since 1983, the population has grown at a rate of 6.2 percent annually. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island, with the population ranging from 2,235 to over 17,000. The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. At least 100 sea lions can be observed during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there have never been any reported sea lion births at VAB previously (Thomson, 2003). Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves et al., 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted subadult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most of California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to San Miguel Island and to the southerly

Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on land occurs in September and October during the post-breeding dispersal and although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

#### *Other Marine Mammals*

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and, therefore, are unlikely to be harassed by Boeing's activities. These two species are: the Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). Northern elephant seals and northern fur seals may occur on VAFB but do not haul out in the harbor area. Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). NMFS Stock Assessments can be viewed at: [http://www.nmfs.noaa.gov/pr/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/sars.html). Please refer to those documents for information on these species.

#### **Potential Effects of Activities on Marine Mammals**

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation, as well as the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out along the beach and rocks in the vicinity of the south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during Boeing's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dBA of noise would still be noisy (approximately 72 dBA) at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The Elevating Platform Transporter (EPT) produces approximately 85 dBA, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dBA at 25 ft (7.6 m) away and 62 to 70 dBA at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted.

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a "looming" visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the elevating platform transporter during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a "looming" visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

Under the MMPA, if harbor activities disrupt the behavioral patterns of harbor seals, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to result in disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause serious injury or mortality to marine mammals.

On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the

water, may rise to the level of level B harassment and could even result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or on pupping sites could potentially lead to takes by serious injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor, because on average the number of harbor seals hauled out near the site is less than 30 and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSR 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from 0 to 19 and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application and Final Environmental Assessment. Information in the application and referenced sources is adopted by NMFS as the best information available on this subject.

#### **Mitigation**

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods

of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of Boeing's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

### Monitoring

As part of its 2002 application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS adopts the same plan for this IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

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

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

### Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS within 90 days. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in

other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

### Numbers of Marine Mammals Expected to Be Harassed

Boeing estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen more than once, and using a maximum total of 83 operating days in 2004–2005, NMFS estimates that 145 to 623 Pacific harbor seals may be subject to Level B harassment.

During wharf modification activities, a maximum of 6 California sea lions were seen hauling out in a single day, averaging between 1 and 6 sea lions each day. Based on its own calculations, NMFS believes that a total of 100 California sea lions, 10 northern elephant seals, and 5 northern fur seals may be subject to Level B harassment, because they may be in nearby waters.

### Possible Effects of Activities on Marine Mammal Habitat

Boeing anticipates no loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

Boeing does anticipate unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, Boeing will mitigate for the removal of kelp habitat by placing 150 tons (136.08 metric tons) of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a

diameter of about 2 ft (0.61 m) and each weighing about 1 ton (907 kg). The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. Boeing plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

### Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and, thus, there are no anticipated effects on subsistence needs.

### Conclusions

NMFS has determined that the impact of conducting harbor activities related to the Delta IV/EELV at VAFB, including transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation will result in the harassment of small numbers of Pacific harbor seals, California sea lions, northern elephant seals, and northern fur seals; would have a negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Guadalupe fur seals and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by the affected species to avoid the resultant acoustic and visual stimuli, there is no potential for large-scale movements, such as stampedes, since harbor seals and California sea lions haul out in small numbers near the site and northern elephant seals and northern fur seals do not haul out in the harbor area. The effects of Boeing's harbor activities are expected to be limited to short-term and localized behavioral changes.

Due to the localized nature of these activities, the number of marine mammals potentially taken by harassment are estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely given the low noise levels expected at the site. No rookeries, mating grounds, areas of concentrated feeding, or other areas of

special significance for marine mammals occur within or near south VAFB harbor. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

#### Endangered Species Act (ESA)

This action will not affect species listed under the Endangered Species Act (ESA) that are under the jurisdiction of NMFS. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging and stated that there would not be takes of southern sea otters. In addition, the FWS noting that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities (see 68 FR 36540, June 18, 2003).

#### National Environmental Protection Act (NEPA)

ENSR International (ENSRI) made a Finding of No Significant Impact (FONSI) determination on August 15, 2001, based on information contained within its Environmental Assessment (EA), that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. ENSRI determined therefore, that an environmental impact statement would not be prepared. On April 7, 2004 (69 FR 18353), NMFS noted that ENSRI had prepared an EA for the VAFB harbor activities and made this EA available upon request. In accordance with NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in ENSRI's EA and determined that the ENSRI EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Therefore, it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to Boeing for this activity. Based on this review and analysis, NMFS is adopting the ENSRI EA under 40 CFR

1506.3 and has made its own FONSI. A copy of the ENSRI EA and the NMFS FONSI for this activity is available upon request (see ADDRESSES).

#### Authorization

NMFS has issued an IHA to take marine mammals, by harassment, incidental to conducting harbor activities at VAFB to Boeing for a 1-year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: May 19, 2004.

**Stephen L. Leathery,**

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

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**BILLING CODE 3510-22-S**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 051904A]

#### Pacific 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 Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Analytical Team (TIQ Analytical Team) will hold a working meeting, which is open to the public.

**DATES:** The TIQ Analytical Team working meeting will begin Tuesday, June 8, 2004 at 8:30 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. and continue until business for the day is complete on Wednesday, June 9, 2004.

**ADDRESSES:** The meeting will be held at The University Inn, Orcus Room, 4140 Roosevelt Way NE, Seattle, WA 98105; telephone: (206) 632-5055.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Seger, Staff Officer (Economist); telephone: (503) 820-2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the TIQ Analytical Team meeting is to conduct preliminary scoping on the types impacts to be considered and analytical methods used in a groundfish trawl dedicated access privilege Environmental Impact

Statement. Related data collection issues will also be discussed. A panel of independent advisors has been invited to work with the TIQ Analytical Team on these issues during the meeting.

Although non-emergency issues not contained in the TIQ Analytical Team meeting agenda may come before the group for discussion, those issues may not be the subject of formal committee action during these meetings. TIQ Analytical Team action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the group's intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820-2280 at least 5 days prior to the meeting date.

Dated: May 20, 2004.

**Matteo J. Milazzo,**

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

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I. D. 052004C]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

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

**ACTION:** Notice of receipt of an application for an exempted fishing permit.

**SUMMARY:** NMFS has received an application for an exempted fishing permit (EFP) from the Washington Sea Grant Program (WSGP). If granted, this EFP would authorize the applicant to conduct an experiment to evaluate the integrated weight groundline as a potential seabird avoidance measure in the fall 2004 Pacific cod hook-and-line fishery in the Bering Sea and Aleutian Islands Management Area (BSAI). The project is intended to promote the objectives of the Fishery Management Plan for the Groundfish Fishery of the