

of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Amended Certificate

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Bolinger & Sons, Wenatchee, WA; C&M Fruit Packers, Wenatchee, WA; Cascade Fresh Fruits, L.L.C., Manson, WA; AltaFresh L.L.C. dba Chelan Fresh Marketing, Chelan, WA; Nuchief Sales Inc., Wenatchee, WA; Orchard View Farms, Inc., The Dalles, OR; SST Growers and Packers L.L.C., Granger, WA; Voelker Fruit and Cold Storage, Yakima, WA; and Yakima-Roche Fruit Sales, L.L.C., Yakima, WA; and

2. Delete the following companies as "Members" of the Certificate: Fox Orchards, Mattawa, WA; Magi, Inc., Brewster, WA (as a result of a merger with Chelan Fruit Cooperative, a Member of NFE); Monson Fruit Co., Selah, WA (for its cherry operation, only); Rawland F. Taplett dba R.F. Taplett Fruit & Cold Storage Co., Wenatchee, WA; Sund-Roy L.L.C., Yakima, WA; and Washington Export, L.L.C., Yakima, WA.

The effective date of the amended certificate is September 6, 2005. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 7, 2005.

#### Jeffrey Anspacher,

Director, Export Trading Company Affairs.  
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BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 102204A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Black Abalone Research Surveys at San Nicolas Island, Ventura County, CA

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

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

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Glenn R. VanBlaricom (VanBlaricom) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA.

**DATES:** Effective from November 30, 2005, through November 29, 2006.

**ADDRESSES:** A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 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 references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online 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). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, NMFS, (301) 713-2289.

#### 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.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and sets forth the permissible methods of taking and other means of effecting the least practicable impact on the species and stock or habitat (i.e., mitigation measures) and the requirements pertaining to the monitoring and reporting of such taking.

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. Except for certain categories of 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"].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorization 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 August 31, 2004, NMFS received a letter from Glenn R. VanBlaricom, Ph.D., Washington Cooperative Fish and Wildlife Research Unit, requesting renewal of an IHA that was first issued to him on September 23, 2003 (68 FR 57427, October 3, 2003) for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends in black abalone (*Haliotis*

cracherodii) populations at SNI, Ventura County, California, over time in permanent study sites. Population trend data for black abalone populations have become important in a conservation context because of: a) the reintroduction of sea otters to SNI in 1987, raising the possibility of conflict between otter conservation and abalone populations (abalones are often significant prey for sea otters); b) the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, resulting in dramatically increased rates of abalone mortality at the Island; and c) the recent designation of California populations of black abalones as a species of concern in the context of listing pursuant to the Endangered Species Act (ESA). Research is done under the auspices of the Washington Cooperative Fish and Wildlife Research Unit, the University of Washington, and the U.S. Navy (owner of SNI), with additional logistical support from the University of California, Santa Cruz. Since the abalone are not handled or removed in the course of the research, neither a state nor federal permit is needed.

Additional information on the research is contained in the application and proposed IHA **Federal Register** notice (69 FR 70249), which are available upon request (see **ADDRESSES**).

### Project Description

Nine permanent research study areas are located in rocky intertidal habitats on SNI in Ventura County, CA. The applicant has made 101 separate field trips to SNI from September 1979 through June 2005, participating in abalone survey work on 534 different days at nine permanent study sites. Quantitative abalone surveys on SNI began in 1981, at which point permanent research sites were chosen based on the presence of dense patches of abalone in order to monitor changes over time in dense abalone aggregations. Research is conducted by counting black abalone in plots of 1 m<sup>2</sup> (3.3<sup>2</sup> ft) along permanent transect lines in rocky intertidal habitats at each of the nine study sites on the island. Permanent transect lines are demarcated by stainless steel eyebolts embedded in the rock substrata and secured with marine epoxy compound. Lines are placed temporarily between bolts during surveys and are removed once surveys are completed. Survey work is done by two field biologists working on foot; therefore, monitoring of black abalone populations at SNI can be done only during periods of extreme low tides. The exact date of a visit to any given site is difficult to predict because variation in surf height and sea conditions can

influence the safety of field biologists as well as the quality of data collected. In most years survey work is done during the months of January, February, March, July, November, and December because of optimal availability of low tides. All work is done only during daylight hours because of safety considerations.

Research is expected to extend over a period of 2 more years, from November 30, 2005 through 2007, with additional work in future years remaining a possibility pending funding and staff. Surveys of abalones will be conducted each year during this year period. During each survey year, each of the nine permanent study sites at SNI will be visited three times. Abalone surveys, which take no more than 4 hours at each site, are conducted during two of the three visits to each of the nine sites. A third maintenance visit, which takes less than half of an hour at each site, is used to take measurements and make necessary repairs to plots and is conducted in a month when smaller numbers of pinnipeds are present.

The affected marine mammal populations at SNI, especially California sea lions and northern elephant seals, have grown substantially since the beginning of abalone research in 1979 and have occupied an expanded distribution on the island due to population growth. Sites previously accessible with no risk of marine mammal harassment are now being utilized by marine mammals at levels such that approach without the possibility of harassment is difficult. Of the nine study sites used for the abalone surveys, only two sites can be occupied without the possibility of disturbing at least one species of pinniped; therefore, an IHA is warranted.

### Comments and Responses

A notice of receipt of Dr. VanBlaricom's application for an IHA renewal and proposed IHA was published in the **Federal Register** on December 3, 2004 (69 FR 70249). During the 30-day public comment period, comments were received from the Marine Mammal Commission (Commission) and one member of the public.

*Comment 1:* The Commission concurs with NMFS' preliminary determination that, given the mitigation measures proposed by the applicant, the proposed research activities are likely to result in no more than the temporary modification of behavior by California sea lions, Pacific harbor seals, and northern elephant seals. The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied

that the applicant's monitoring program is sufficient to detect the effects of the proposed research activities, including any mortality and/or serious injury that results from startle responses, or stampedes. The Commission notes, however, that although the proposed mitigation measures are expected to reduce the possibility of injury or death of animals, the potential for such taking remains. Consequently, the Commission recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a marine mammal occurs which appears to be related to the abalone research, further research activities be suspended while NMFS determines whether steps can be taken to avoid further injuries or mortalities or until such taking can be authorized by regulations promulgated under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS appreciates the Commission's concurrence with our determination. NMFS believes that the applicant's monitoring program is sufficient to detect the effects of his proposed research activities. Further, NMFS believes it highly unlikely that injury or mortality of a marine mammal would occur as a result of the proposed abalone research. The only way injury or mortality could occur as a result of the proposed research is if the approach of researchers caused pinniped mothers to either trample or become separated from their pups. Mitigation measures required in the IHA include time of year restrictions that avoid researcher interactions with California sea lion or Pacific harbor seal pups. Though elephant seal pups are sometimes present at abalone surveys, elephant seals are far less reactive to researcher presence than the other two species, researchers use great care approaching sites (and because elephants seals pup on the sand and permanent study sites are on rocks the two are always separated by at least 50 m (164 ft)), and only 16 total (adult) elephant seals have been disturbed in the last two years (of 971 present). However, as suggested, we have added language to the IHA requiring that VanBlaricom suspend research activities and contact NMFS immediately should an injury or mortality of a marine mammal be suspected of resulting from the abalone research.

*Comment 2:* One individual expressed concerns about many people doing research and all of them resulting in the death of wildlife. This individual further questioned the applicant's need to continue doing research he has already been conducting for many years.

*Response:* The taking by serious injury or death of any marine mammal is not authorized by this IHA and would result in the modification, suspension or revocation of this Authorization. NMFS anticipates that Glenn VanBlaricom's black abalone surveys will result in no more than Level B Harassment that is limited to short term and localized behavioral changes, such as startle reactions or flushes of low numbers of individuals from haul-out sites.

Multi-year surveys are necessary to assess population trends. However, the IHA that NMFS is issuing does not authorize the applicant's black abalone research itself, but the incidental taking by harassment of small numbers of marine mammals of a species or population stock by the applicant while engaging in that activity.

#### **Description of Habitat and Marine Mammals Affected by the Activity**

San Nicolas is one of the eight Channel Islands, located in the Santa Barbara Channel off Southern California. Nine miles long and about three and a half miles across at its widest point, it is the farthest island from the mainland, more than 60 miles (96.6 km) offshore and about 85 miles (136.8 km) southwest of Los Angeles, California. SNI is owned and operated by the U.S. Navy and is off-limits to civilians without specific permission.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds. On SNI, three pinniped species (northern elephant seal, Pacific harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition, a single adult male Guadalupe fur seal (*Arctocephalus townsendi*) was seen at one abalone research site on two occasions during the summer months in the mid-1980's; however, there have been no sightings of this species on the island since then.

Further information on the biology and distribution of these species and others in the region can be found in Dr. VanBlaricom's application, which is available upon request (see **ADDRESSES**), and the Marine Mammal Stock Assessment Reports, which are available online at [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/individual\\_sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/individual_sars.html).

#### *California Sea Lions*

The U.S. stock of California sea lions extends from the U.S./Mexico border north into Canada. Breeding areas of the

sea lion are on islands located in southern California, western Baja California, and the Gulf of California and they primarily use the central California area to feed during the non-breeding season. Population estimates for the U.S. stock of California sea lions, which are based on counts conducted in 2001 and extrapolations from the number of pups, range from a minimum of 138,881 to an average of 244,000 animals, with a current growth rate of 5.4 to 6.1 percent per year (Carretta et al., 2005). The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted under the MMPA.

California sea lions haul out at many sites on SNI and are by far the most common pinniped on the island. Over the course of a year, up to 100,000 sea lions may use SNI. Numbers of sea lions at SNI increased by about 21% per year between 1983 and 1995 (NMFS, 2003) and sea lions have recently started occupying areas that were not formerly used. Pupping occurs on the beaches of SNI from mid-June to mid-July. Females nurse their pups for about eight days and then begin an alternating pattern of foraging at sea vs. attending and nursing the pup on land, which lasts for about eight months, and sometimes up to a year. California sea lions also haul out at SNI during the molting period in September, and smaller numbers of females and juveniles haul out during most of the year.

#### *Pacific Harbor Seals*

Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–500 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996). A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. Based on the most recent harbor seal counts (2002) and including a correction factor for the above, the estimated population of harbor seals in California is 27,863 (Carretta et al., 2005), with an estimated minimum population of 25,720 for the California stock of harbor seals. Counts of harbor seals in California showed a rapid increase from 1972 to 1990, but since 1990 there has been no net population growth along the mainland or the Channel Islands. Though no formal determination of Optimal Sustainable Population (OSP)

has been made, the decrease in the growth rate may indicate that the population has reached its carrying capacity. The harbor seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Harbor seals haul out at various sandy, cobble, and gravel beaches around SNI and pupping occurs on the beaches from late February to early April, with nursing of pups extending into May. Harbor seals may also haul out during molting period in late Spring, and smaller numbers haul out at other times of year. Harbor seal abundance increased at SNI from the 1960s until 1981, but since the average counts have not changed significantly. From 1982 to 1994, numbers of harbor seals have fluctuated between 139 and 700 harbor seals based on both peak ground counts and annual photographic survey photos. The most recent aerial count was of 457 harbor seals in 1994.

#### *Northern Elephant Seals*

Northern elephant seals breed and give birth in California (U.S.) and Baja California primarily on offshore islands, from December to March (Stewart et al., 1994). The California breeding stock, which includes the animals on SNI, is now demographically separated from the Baja California population. Based on trends in pup counts, northern elephant seal colonies appeared to be increasing in California through 2001. The population size of northern elephant seals in California is estimated to be 101,000 animals, with a minimum population estimate of 60,547 (Carretta et al., 2005). A continuous average growth rate (though it has declined a bit in recent years) of 8.3 percent has seen numbers of this species increase from 100 in 1900 to the current population size (Carretta et al., 2005). The northern elephant seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Increasing numbers of elephant seals haul out at various sites around SNI. Based on a pup count in 1995 that found 6,575 pups, scientists estimated that over 23,000 elephant seals may use SNI in a year (NMFS, 2003). From 1988 to 1995 the pup counts on SNI increased at an average rate of 15.4 percent per year, however, the growth rate of the population as a whole seems to have declined in recent years (NMFS, 2003). Pupping occurs on the beaches of SNI from January to early February, with nursing of pups extending into March. Northern elephant seals also haul out during the molting periods in the spring and summer, and smaller numbers haul out at other times of the year.

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

Variable numbers of sea lions, harbor seals, and elephant seals typically haul out near seven of the nine study sites used for abalone research, with breeding activity occurring at four of these seven sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites. For the previous IHA, the applicant estimated that pinnipeds typically haul out near six of the nine study sites, with breeding activity occurring at five of these six sites. However, during field work in 2003 and 2004, it became apparent that non-breeding California sea lions had begun to haul out regularly at an additional abalone study site, and that sea lions and elephant seals hauled out at one of the study sites are non-breeding animals; therefore, it has become evident that seven of the nine study sites are used by pinnipeds for hauling out, with breeding activity occurring at four of these seven sites.

Incidental harassment may result if hauled animals move to increase their distance from persons involved in abalone surveys. Although marine mammals will not be deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out directly upon the permanent abalone study plots. In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

One exception to the low risk of marine mammal injury or mortality associated with abalone research would be if disturbances occur during breeding season, as it is possible that mothers and dependent pups may become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed. Trampling increases the risk of injury or death to the pups. However, mitigation measures including time of year restrictions that require avoidance of all sites with California sea lion pups or harbor seal pups will be incorporated into the IHA. Though elephant seal pups are sometimes present at abalone surveys, NMFS does not expect risk of pup mortalities because elephant seals

are far less reactive to researcher presence than the other two species. Also, researchers use great care approaching sites and elephants seals pup on the sand while the permanent study sites are on rocks, leaving the two always separated by at least 50 m (164 ft). In fact, only an estimated 16 total (adult) elephant seals have been disturbed in the last two years (of 971 present).

### **Mitigation**

Several mitigation measures to reduce the potential for harassment from population assessment research surveys will be implemented as part of the SNI abalone research activities. Primarily, mitigation of the risk of disturbance to pinnipeds simply requires that researchers are judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be re-occupied by any hauled marine mammals that may have been disturbed by the presence of abalone researchers.

The potential risk of injury or mortality will be avoided with measures required under the authorization. Disturbances to females with dependent pups (in the cases of California sea lions and Pacific harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to the four black abalone study sites with resident pinnipeds during periods of breeding and lactation from mid-February through the end of October. The previous authorization required the applicant to avoid conducting survey research at certain study sites that may have breeding and/or lactating pinnipeds during the period from February through October. However, during field work in early 2004 it became evident that pupping by harbor seals at these sites does not begin until the latter half of February. Therefore, the current authorization is shortened to exclude the first half of February. During this period, abalone research would be confined to the other five sites where pinniped breeding and post-partum nursing does not occur. Limiting visits to the four breeding and lactation sites to periods when these activities do not occur (November, December, January, and the first half of February)

will reduce the possibility of incidental harassment and the potential for serious injury or mortality of dependent California sea lion pups and Pacific harbor seal pups to near zero.

Northern elephant seal pups are present at four sites during winter months. Risks of injury or mortality of elephant seal pups by mother/pup separation or trampling are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Also, elephant seal pupping typically occurs on the sandy beaches at SNI, approximately 50 m (164 ft) or more away from the abalone study sites. Possible take of northern elephant seal pups will be minimized by using a very careful approach to the study sites and avoiding the proximity of hauled seals and any seal pups during collection of abalone population data.

One individual Guadalupe fur seal was seen at study site 8 on two separate occasions during the summer months in the mid-1980's. No individuals of this species have been seen during abalone research work since then. Thus, limitation of research visits to site 8 to the period November through January eliminates the potential for taking of Guadalupe fur seals by harassment. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any disturbance. Harassment, injury, or mortality of Guadalupe fur seals will be prevented by immediately suspending research work and vacating any study area in which this species is seen. Therefore, an authorization for the taking of Guadalupe fur seals by harassment is neither required nor requested. Sea otters are not expected ashore during the time periods when the research activities would be conducted. However, if sea otters are sighted ashore during the abalone research, Dr. VanBlaricom would follow similar procedures in place for fur seals, suspending research activities in any areas California sea otters are occupying.

### **Monitoring**

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy. The U.S. Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore,

monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

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

If at any time injury or death of any marine mammal occurs that may be a result of the proposed abalone research, VanBlaricom will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

#### Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the year-long field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Regional Administrator 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.

#### Numbers of Marine Mammals Expected to be Harassed

The distribution of pinnipeds hauled out on beaches is not even. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained

within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way. In VanBlaricom's 2004 and 2005 abalone survey field seasons, respectively, the following numbers of marine mammals were disturbed (potentially harassed): 1,472 and 983 California sea lions (of 2,329 and 1,383 present); 99 and 88 Pacific harbor seals (of 108 and 99 present); and 7 and 9 northern elephant seals (of 562 and 409 present). The researcher considered an animal to have been disturbed if it moved, even a few feet, in response to the researcher's presence or if the animal was already moving and changed direction. Animals that raised their head and looked at the researcher without moving were not considered disturbed. Based on past observations and assuming a maximum level of incidental harassment of marine mammals at each site during periods of visitation, NMFS estimates that the maximum total possible numbers of individuals that will be incidentally harassed (resulting from one complete cycle of visits to the nine study sites) would be 1600 California sea lions, 120 Pacific harbor seals, and 20 northern elephant seals. Three visit cycles are anticipated during the year-long validity of an IHA. As noted earlier, any site occupied by Guadalupe fur seals will be vacated by researchers immediately and no taking of this species will occur.

NMFS anticipates that Level B harassment of small numbers of California sea lions, Pacific harbor seals and northern elephant seals may occur incidental to the proposed continuation of black abalone research at SNI and that these takings will result in no more than a negligible impact on these marine mammal species or stocks or on their habitats.

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

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around each of the nine study sites less desirable as haulout sites for a total of 8.5 hours per year.

#### Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for California sea lions, Pacific harbor seals, or northern elephant seals in California waters, and thus, there are no anticipated effects on their availability for subsistence uses.

#### ESA

For the reasons already described in this **Federal Register** Notice, NMFS has

determined that the described abalone research and the accompanying IHA will have no effect on species or critical habitat protected under the ESA. Therefore, consultation under Section 7 was not required.

#### National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) of the Issuance of an IHA to Take Marine Mammals, by Harassment, During Black Abalone Research at SNI, California and subsequently issued a Finding of No Significant Impact on November 21, 2005. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

#### Determinations

Based on the information contained in the application, the December 3, 2004 (69 FR 70249) **Federal Register** notice, Dr. VanBlaricom's monitoring reports for previous field seasons, and this document, NMFS has determined that the impact of abalone research will result, at most, in a temporary modification in behavior by small numbers of California sea lions, Pacific harbor seals, and northern elephant seals, in the form of head alerts, movement away from the researchers and/or flushing from the beach. In addition, no take by injury or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity and the distance between the seals and the researchers, NMFS anticipates that the number of potential harassment takings will be small relative to the species stock sizes and will have no more than a negligible impact on the affected species or stocks. The project is not expected to interfere with any subsistence hunts. NMFS has therefore determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

#### Authorization

NMFS has issued an IHA to Dr. Glenn R. VanBlaricom for the harassment of small numbers of California sea lions, Pacific harbor seals, and northern elephant seals incidental to black abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 29, 2005.

**Donna Wieting,**

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

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket No. 051128311-5311-01]

#### Public Telecommunications Facilities Program: Closing Date

**AGENCY:** National Telecommunications and Information Administration (NTIA), Commerce.

**ACTION:** Notice of availability of funds.

**SUMMARY:** Pursuant to the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. 109-108, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP). The PTFP assists, through matching grants, in the planning and construction of public telecommunications facilities in order to: (1) Extend delivery of services to as many citizens as possible by the most cost-effective means, including use of broadcast and non-broadcast technologies; (2) increase public telecommunications services and facilities available to, operated by, and controlled by minorities and women; (3) strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

**DATES:** Applications must be received prior to 5 p.m. Eastern Standard Time (Closing Time), February 7, 2006 (Closing Date). Applications submitted by facsimile or electronic means are not acceptable. If an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date and Closing Time, (2) significant weather delays or natural disasters, or (3) delays due to national security issues, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. NTIA will not accept applications posted on the Closing Date or later and received after this deadline.

**ADDRESSES:** To obtain a printed application package, submit completed

applications, or send any other correspondence, write to PTFP at the following address (please note the new room number): NTIA/PTFP, Room H-4096, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Application materials may be obtained electronically via the Internet (<http://www.ntia.doc.gov/ptfp>).

#### FOR FURTHER INFORMATION CONTACT:

William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482-5802; fax: (202) 482-2156. Information about the PTFP can also be obtained electronically via the Internet (<http://www.ntia.doc.gov/ptfp>).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

The full funding opportunity announcement for the PTFP FY 2006 grant cycle is available through [www.Grants.gov](http://www.Grants.gov) or by contacting the PTFP office at the address noted above.

##### Funding Availability

The Congress has appropriated \$20 million for FY 2006 PTFP awards. For FY 2005, NTIA awarded \$21.2 million in PTFP funds to 123 projects, including 73 radio awards, 39 television awards and 11 nonbroadcast awards. The radio awards ranged from \$9,255 to \$451,848. The television awards ranged from \$11,298 to \$927,937. The nonbroadcast awards ranged from \$30,495 to \$440,000.

##### Statutory and Regulatory Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390-393, 397-399(b). The PTFP operates pursuant to rules (1996 Rules) which were published on November 8, 1996 (61 FR 57966). Copies of the 1996 Rules (15 CFR Part 2301) are posted on the NTIA Internet site at [www.ntia.doc.gov/Rules/currentrules.htm](http://www.ntia.doc.gov/Rules/currentrules.htm) and NTIA will make printed copies available to applicants upon request.

##### Supplemental Policies

The following supplemental policies will also be in effect:

(A) Applicants may file emergency applications at any time.

(B) Applicants may file requests for Federal Communications Commission (FCC) authorizations with the FCC after the PTFP Closing Date. Grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant.

(C) PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. PTFP applicants for distance learning projects must notify the state telecommunications agencies in the states in which they are located but are not required to notify every state telecommunications agency in a potential service area.

(D) For digital television conversion projects, NTIA has created two new Subpriorities in the Broadcast Other category.

(E) For digital radio conversion projects, NTIA has created a new Subpriority in the Broadcast Other category.

*Catalog of Domestic Federal Assistance:* 11.550, Public Telecommunications Facilities Program.

##### Eligibility

To apply for and receive a PTFP Construction Grant or Planning Grant, an applicant must be: (a) A public or noncommercial educational broadcast station; (b) a noncommercial telecommunications entity; (c) a system of public telecommunications entities; (d) a non-profit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or (e) a state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

##### Evaluation and Selection Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.18 for the Selection Process.

##### Evaluation Criteria

See 15 CFR 2301.17 for a full description of the Evaluation Criteria. The six evaluation criteria are (1) Applicant Qualifications, (2) Financial Qualifications, (3) Project Objectives, (4) Urgency, (5) Technical Qualifications (construction applicants only) or Planning Qualifications (planning applicants only), and (6) Special Consideration.

##### Funding Priorities and Selection Factors

See 15 CFR 2301.4 and the supplemental policies above for a description of the PTFP Priorities and 15 CFR 2301.18 for the Selection Factors.

##### Cost Sharing Requirements

PTFP requires cost sharing. By statute, PTFP cannot fund a construction project for more than 75% of the eligible project