## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 032204I]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow up to 20 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The GOM Rolling Closure Areas; the Cashes Ledge and Western Gulf of Maine (WGOM) Closure Areas; the Days-at-Sea (DAS) notification requirements; the effort-control program (DAS); and minimum fish size restrictions for the temporary retention of undersized fish for data collection purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this document must be received on or before April 13, 2004.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA453@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on CCCHFA GOM Cod Tagging Study.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CCCHFA GOM Cod Tagging Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

**SUPPLEMENTARY INFORMATION:** The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) submitted an application for an EFP on March 8, 2004. The application was complete as received. The experimental fishing application requests authorization to allow the catch, tagging, and release of Atlantic cod using rod and reel only. The primary goal of the study is to provide high quality scientific data on the current distribution and movement patterns of Atlantic cod in the GOM. It is anticipated that the improved understanding of the cod stocks expected to result from this study will ultimately enable better and more effective management of the cod fishery.

The study proposes to catch, tag, and release 2,000 individual cod during 20 dedicated tagging trips, using up to 20 commercial fishing vessels. The participating vessels would catch cod using rod and reel with treble hooks eliminated from the jigs, temporarily hold cod alive in tanks aboard the vessel while processing and tagging the fish, and return the fish alive to the sea. Any other species caught would be released as soon as practicable. During the study, no fish of any species would be landed or retained for commercial sale. Cod would be tagged on dedicated tagging trips focused on, but not limited to, Jeffery's Ledge, Platt's Bank, Cashes Ledge, Massachusetts Bay, Race Point, and Cape Cod Bay. The study would likely have minimal impacts on the target species in the area due to the use of rod and reel as the catch method and efforts to minimize trauma and release all specimens alive. Tagging program staff would be on board the vessel for training purposes and to observe 20 percent of the dedicated trips to assist with tagging operations.

The research study would occur between April 15–December 31, 2004, in an area encompassed by the following coordinates: From the outer Cape Cod shoreline at 42° N lat., 70° W long.; east along 42° N lat. to 69° W long; then north along 69° W long. to 43°30' N; and then west along 43°30' N lat. to the Maine coastline.

This EFP would allow for exemptions from the Northeast (NE) Multispecies Fishery Management Plan (FMP) as follows: The GOM Rolling Closure Areas specified at 50 CFR 648.81(g)(1)(i)-(v); the Cashes Ledge and Western Gulf of Maine (WGOM) Closure Areas specified at § 648.81(h)(1) and (i)(1); the Days-at-Sea (DAS) notification requirements specified at § 648.10; the effort-control program (DAS) as specified at § 648.82(a); and minimum fish size restrictions specified at § 648.83(a) for the temporary retention of undersized fish for data collection purposes.

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

Dated: March 24, 2004.

**Bruce C. Morehead,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111403B]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys off the Northern Yucatan Peninsula in the Gulf of Mexico

**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 take marine mammals by harassment incidental to conducting oceanographic surveys off the northern Yucatan Peninsula in the Gulf of Mexico to Lamont-Doherty Earth Observatory (LDEO).

**DATES:** Effective from February 27, 2004, through February 26, 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*

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

**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 (Secretary) 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 and comment.

Permission may 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 and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings 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.''

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. Under section 3(18)(A), 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; 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.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

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

## Summary of Request

On October 8, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Gulf of Mexico off the northern Yucatan Peninsula. The Gulf of Mexico research cruise will be off the coast of the northern Yucatan Peninsula in an area extending between 21° to 22.5° N and 88° to 91° W. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the project is to study the Chicxulub Crater. The Chicxulub Crater was formed 65 million years ago when a massive meteor crashed into the Yucatan Peninsula of Mexico leaving behind the crater with a diameter of about 195 km (121 mi). The well-known massive extinction event at the Cretaceous-Tertiary (K-T) boundary appears to have been caused, at least in part, by this impact. It is also the only large terrestrial impact crater with a well preserved topographic peak ring. The Chicxulub Crater is uniquely suited for a seismic investigation into the deformation mechanisms of large diameter impacts in general and the physical parameters of the K-T impact in particular. The goals are to: (1) determine the direction of approach and angle of the Chicxulub impact through the collaborative seismic and modeling effort, (2) map the deformation recorded in the upper crust near the crater center that may yield important information about the kinematics of large bolide impacts, (3) image the peak ring and other morphologic features in the northwest quadrant of the crater to further understand the physical parameters of the Chicxulub impact structure, and (4) model the 3–D collapse of an asymmetric transient crater to help better understand the mechanics of large impact craters and to quantify the environmental effects of the K-T impact.

## Description of the Activity

Information of the work proposed for 2004 is contained in the proposed authorization notice (68 FR 70000, December 16, 2003), and in the application and in the Final Yucatan Environmental Assessment for oceanographic surveys in the Gulf of Mexico off the northern Yucatan Peninsula (LDEO, 2003) which are available (see **ADDRESSES**).

In spring 2003, LDEO conducted an acoustic calibration study in the northern Gulf of Mexico. The purpose of the study was to calibrate LDEO's various seismic sources and determine the distances at which received sound levels diminish below levels that may result in take of marine mammals. NMFS received the results of this study on February 20, 2004. They are the first measurements of sound propagation in shallow water using this particular seismic source and are the best available science. The data indicate that the safety zone radius used for mitigation to prevent Level A harassment of marine mammals should be larger than the safety radius in the proposed IHA. The results of the study are available (See **ADDRESSES**).

## Changes from the Proposed IHA

The calibration study data indicate that the 180 dB isopleth is at a distance of 3500 m (11483 ft) from the array, rather than the 900 m (2935 ft) estimated in the application and proposed IHA. This new data changes the take estimates for marine mammals. Refer to the Estimates of Take for the Northern Yucatan Peninsula Cruise in this Notice for the updated take estimates.

In light of the new data, NMFS has imposed additional mitigation measures for this seismic survey. First, the safety radius will be 3500 m (11483 ft) rather than the proposed 1350 m (4429 ft) (which is 1.5 times the estimated 180 dB isopleth). Second, in addition to visual observers, LDEO will use passive acoustic monitoring (PAM) whenever the vessel is operating in waters deep enough for the PAM hydrophone array to be towed. Third, LDEO will increase the number of visual observers from two to at least four, and several acousticians will be available to monitor the PAM system. Finally, LDEO will use Big Eyes binoculars to enable observers to detect marine mammals at greater distances from the vessel. See Mitigation for more information.

NMFS has also determined that takes of pinnipeds are not likely to occur in the action area. Therefore, hooded seals are not included in this IHA.

## Comments and Responses

A notice of receipt of the LDEO northern Yucatan application and proposed IHA was published in the

**Federal Register** on December 16, 2003 (68 FR 70000). During the 30–day comment period, comments were received from the Animal Welfare Institute, the Center for Biological Diversity (CBD), and an individual. In addition, NMFS received supplemental comments from CBD on February 26, 2004. Those comments were received well after the comment period closed and shortly before the subject seismic surveys were scheduled to begin. Therefore, NMFS did not consider them in issuing this IHA, except where they overlap with CBD's first set of comments.

*Comment 1:* One commentor states that it is the job of the Office of Protected Resources to administer programs that deal with the protection, conservation, and recovery of species protected under the Endangered Species Act and they must pay attention to the fact that marine mammals are sentient beings.

*Response:* NMFS affirms that marine mammals should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management. In that regard, the MMPA was amended in 1981 and 1994 to allow for the taking (by harassment, injury and mortality) of marine mammals by otherwise lawful activities provided that the total taking by the activity is not having more than a negligible impact on affected marine mammal stocks, and would not have an unmitigable adverse impact on the availability of those marine mammal stocks for subsistence uses. For the proposed activity, the requisite findings have been made, as explained in this document.

*Comment 2:* The Animal Welfare Institute objects to the issuance of an Incidental Harassment Authorization for this project based on the precautionary principle. They feel that it is dangerous to experiment with sounds as loud as these in the open ocean.

*Response:* As mentioned in the previous comment, the MMPA requires the Secretary to authorize the taking of marine mammals provided certain conditions are met. For this authorization, NMFS believes it has applied a precautionary approach that is consistent with the requirements of the MMPA and based on the best available science. That is, LDEO has implemented several mitigation measures that will minimize harassment takings to the lowest level practicable (as required by the MMPA). These mitigation measures include (1) establishment and monitoring of safety zones to prevent Level A harassment; (2) implementation of ramp-up to allow marine mammals sufficient time to leave the immediate vicinity of the seismic array before sounds become annoying or dangerous; (3) establishment of a 30–minute pre-ramp-up monitoring program; and (4) passive acoustic monitoring where practicable. The research being conducted is not an ''experiment'' but scientifically valid peer-reviewed research being undertaken to improve knowledge of geological history. Seismic arrays were developed to mitigate impacts to marine life by eliminating the use of large explosives used in earlier decades to explore for oil and conduct scientific research.

*Comment 3:* CBD believes NMFS has not demonstrated that the LDEO project will take only small numbers of marine mammals.

*Response:* NMFS believes that the small numbers requirement has been satisfied. The U.S. District Court for the Northern District of California held in *NRDC* v. *Evans* that NMFS' regulatory definition of ''small numbers'' improperly conflates it with the ''negligible impact'' definition. Even if that is the case, NMFS has made a separate determination that the numbers of takes of the affected marine mammal species will be small. The best estimate of takes indicates that 9.4 percent or less of the affected species or stocks will be harassed. Although the absolute numbers may arguably not be small, they are small relative to the population sizes.

*Comment 4:* CBD states that NMFS does not adequately analyze the depths of water in which the surveys will take place and how the difference in depths affect the impacts to marine mammals.

*Response:* The LDEO application describes how seismic sounds can be received in the ocean. Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection form the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sound propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. These variations in travel time have the effect of lengthening the duration of the received pulse.

Received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson *et al.* 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs 9 m (29.5 ft) or 18 m (59 ft) have shown that received levels are typically several decibels lower at 3 m (Greene and Richardson, 1988).

During a 2003 study in the northern Gulf of Mexico, LDEO obtained measurements of received sound levels as a function of distance from LDEO's airgun arrays. The report on those ''calibration measurements'' has been completed. The measurement indicate that received levels in deep water (3200 m) (10499 ft) diminish more rapidly with increasing distance, whereas levels in shallow water (30 m) (98 ft) diminish less rapidly. The 2003 calibration results show that the measured depth-specific 180 dB distance is 3500 m (11483 ft). The required mitigation measures have been modified to account for this.

LDEO plans to obtain additional data on received levels of the sounds from the various LDEO airgun configurations during a follow-up calibration study in the northern Gulf of Mexico in April 2004. Plans for that study call for measurements in shallow, intermediate, and deep water.

*Comment 5:* CBD states that there is no mention of the compounded impact of the 20–airgun array's seismic output along with the two other acoustical data acquisition systems, the sonar and sub-bottom profiler. CBD states that the proposed IHA **Federal Register** notice provides no estimate of take from the sonar and profiler individually or from all three sources collectively, and instead assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the multibeam sonar. CBD comments that this explanation does not account for times when all three sources may not be operating simultaneously or provide any discussion of the enhanced impact of multiple acoustic sources when operating together.

*Response:* As NMFS indicated in the FR notice of the proposed IHA, the multibeam sonar has an anticipated radius of influence less than that for the airgun array. It is further stated that marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the sonar. There is no enhanced impact of using the multibeam when operating it together with the airgun array. The sub-bottom profiler would not enhance impacts, since the radii of influence are smaller for the profiler than those of the airgun array.

It is true that there are no estimates of take for times when the multibeam sonar and/or sub-bottom profiler are operated without airguns. This is because the 160–dB and 180–dB isopleths of the sub-bottom profiler and multibeam are small. Durations of exposure and of behavioral responses to these sources would be brief, and any behavioral reactions would not rise to the level of take. Also, visual monitoring would be most effective at those shorter distances from the vessel, allowing for greater detection and avoidance of marine mammals in the vicinity.

*Comment 6:* CBD states that NMFS' analysis of mitigation measures to ensure least practicable impact is flawed because its analysis of impacts is incomplete, for the following reasons. First, the safety radii have not been verified. Also, the only proposed marine mammal detection method is visual surveillance by daytime observers. Although bridge personnel will keep watch at night, nighttime detection rates of marine mammals are probably very low. There is no discussion of why nighttime operations are considered necessary, why experienced marine mammal observers will not be on duty during nighttime hours, how effective any observation efforts are expected to be, or why alternative means of ensuring that the required monitoring program is likely to detect most marine mammals in or near the safety zones are not identified and required. Also, NMFS has failed to mention or require any exclusion zones to avoid seismic operations in coastal areas and key habitat for feeding, mating, breeding, and migration.

*Response:* NMFS believes that the required mitigation measures ensure the least practicable adverse impacts. The 180–dB isopleth modeling has been recently verified and NMFS' IHA has accordingly set the safety radius as 3500 m (11483 ft) from the arrays, within which sound levels greater than or equal to 180 dB re 1 µPa rms (the criteria for onset of Level A harassment for cetaceans) are predicted to be received.

Nighttime operations are necessary due to cost considerations. The daily cost to the Federal Government to operate vessels such as *Ewing* and the *Seaward Johnson* is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $175,000 more, depending on average daylight at the time of work.

NMFS agrees that the effectiveness of nighttime visual monitoring is limited. LDEO will now also incorporate passive acoustic monitoring whenever depth conditions allow. LDEO and the marine mammal observers have attended an orientation course for the use of the Lamont Seamap system onboard the *Ewing*. In addition to the observers, several acousticians from the science party will be able to monitor the passive acoustic system.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all required mitigation and monitoring), NMFS has determined that the IHA's requirements ensure that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least 1 hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; start-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore it is virtually impossible that the 20–gun array will be ramped-up from a shut-down at night.

In regards to exclusion zones, during the period of the survey, marine mammals will be dispersed throughout the proposed study area in the southern Gulf of Mexico. No concentrations of marine mammals or marine mammal prey species are known to occur in the study area at that time of year. The airgun operations will not result in any permanent impact on habitats used by marine mammals or their food sources. The use of the OBS receivers may have a temporary disturbance to sediments and benthic organisms, but the area that may be disturbed is a small fraction of marine mammal habitat and the habitat of their prey species. The airguns are used as the energy source for the seismic surveys because they do not kill fish. Injurious effects on fish would be limited to short distances. The ramp-ups will also give the fish an opportunity to move away from the sound source as the strength of the sound increases.

*Comment 7:* CBD believes that in order for NMFS to comply with the National Environmental Policy Act (NEPA), it must demonstrate that it has fully analyzed the impacts of, alternatives to, and mitigation measures for the project prior to issuing an IHA for the LDEO project. NMFS must assess the cumulative impacts of the project in conjunction with other actions on the environment.

*Response:* NMFS follows NEPA regulations and NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) before making a determination on whether it will adopt another federal agency's NEPA document, or prepare its own. Critical to this determination is the quality of another agency's NEPA document, whether it fully addresses the action proposed by NOAA Fisheries, and whether NOAA Fisheries' proposed action is significant as defined in 40 CFR 1508.27 and NAO 216–6, section 6.01. As noted in the proposed authorization notice (68 FR 60086; October 21, 2003), an EA was prepared by National Science Foundation (NSF) and released to the public by NOAA Fisheries. That EA contained a complete description of the proposed action and identified alternatives to that action; a description of the affected environment; an assessment of impacts, including unavoidable impacts, indirect impacts and cumulative impacts; and the mitigation measures to reduce impacts to the lowest level practicable. In accordance with NAO 216–6, NMFS has reviewed the information contained in the NSF EA and determined that it 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. Based on this review and analysis, NMFS adopted the NSF EA under 40 CFR 1506.3 and made its own Finding of No Significant Impact (FONSI). As a result, NMFS has determined that it is not necessary to issue either a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to LDEO for this activity.

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

A detailed description of the Gulf of Mexico off the northern Yucatan Peninsula and its associated marine mammals can be found in the LDEO application and a number of documents referenced in the LDEO application, and is not repeated here. In the Gulf of Mexico near the Yucatan Peninsula, 29 marine mammal species are known to occur within the proposed study area. The species included in this application

are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Sowerby's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale (*Globicephala melas*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Seven of these species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, North Atlantic right, humpback, sei, fin, and blue whales, as well as West Indian manatee. Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

**Potential Effects on Marine Mammals**

A discussion on potential impacts on marine mammals was provided in the **Federal Register** notice 68 FR 70000 (December 16, 2003) and in the LDEO application.

**Mitigation**

The following mitigation measures are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) power-down and shut-down procedures; (3) ramp-up procedures; and (4) marine mammal and sea turtle monitoring in the vicinity of the arrays through observers and passive acoustic monitoring. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radius which LDEO has measured and modeled. The sound pressure fields for the 20–gun array in relation to distance and direction from the airguns are predicted to be at 3500 m (11483 ft) from the airgun array.

The directional nature (vertical beam-forming) of the 20–airgun array to be used in this project is also an important mitigating factor. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Also, because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

**Speed and Course Alteration**

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not enter the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

**Power-down and Shut-down Procedures**

Airgun operations will be powered-down (or shut-down) immediately when cetaceans or sea turtles are seen within or about to enter the safety radius. If a marine mammal is detected outside the safety radius but appears likely to enter it, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a marine mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20–gun array, one 80 $in^3$ airgun will continue to be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until any marine mammal has cleared the safety radius. The mammal or sea turtle has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales). These mitigation measures also apply in the case of sea turtles.

**Ramp-up Procedure**

When airgun operations with the 20–gun array commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or ''ramped up'' (also described as a ''soft start''). Operations will begin with the smallest gun in the array (80 in3). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20–gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

The ''ramp-up'' procedure will be required under the following circumstances. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, ramp-up would be required after a ''no shooting'' period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.Passive

acoustic monitoring has been added to the mitigation measures. The Seamap system has four hydrophones which allow an observer to take a bearing on the vocalization of a marine mammal. Verification can then be made through visual observation by the marine mammal observers.

*Marine Mammal Monitoring*

LDEO must have at least four observers on board the vessel, and at least two must be experienced marine mammal observers that NMFS has approved in advance of the cruise. These observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations and during any nighttime ramp-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

At least two observers will be on duty in shifts of no longer than 4 hours. At least three observers must be on watch during the 30–minute periods preceding startup of the airguns and during ramp-ups. Use of more than one observer will increase the likelihood that marine mammals near the source vessel are detected. LDEO bridge personnel will also assist in detecting marine mammals and sea turtles and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observers will watch for marine mammals and sea turtles from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observers will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon), with a set of Big Eyes binoculars, and with the naked eye during the daytime. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or a sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals and sea turtles during this time and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. If the airguns are ramped-up at night, at least three marine mammal observers will monitor for marine mammals and sea turtles for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

**Reporting**

LDEO will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to be on or around April 4, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

**Estimates of Take for the Northern Yucatan Peninsula Cruise**

NMFS' current criteria for onset of Level A harassment of cetaceans from impulse sound is 180 re 1 μPa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley *et al.* 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation, all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize the possibility of Level A harassment to the lowest level practicable. LDEO has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed seismic survey at the northern Yucatan Peninsula using data on marine mammal abundance from a previous survey region.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels equal to or greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 20–gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than or equal to 160 dB.

| Species | ''Best Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB) | % of North Atlantic Population | Requested Take Authorization |
|---|---|---|---|
| *Physeteridae* | | | |
| Sperm whale | 0 | 0 | 10 |
| Dwarf/Pygmy sperm whale | 0 | 0 | 10 |
| *Ziphiidae* | | | |
| Cuvier's beaked whale | 0 | 0 | 10 |
| Sowerby's beaked whale | 0 | 0 | 10 |
| Gervais' beaked whale | 0 | 0 | 10 |
| Blainville's beaked whale | 0 | 0 | 10 |
| *Delphinidae* | | | |
| Rough-toothed dolphin | 393 (99) | N.A.[2] | 590 |
| Bottlenose dolphin | 12142 (3054) | 9.4 | 18213 |

| Species | "Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB) | % of North Atlantic Population | Requested Take Authorization |
|---|---|---|---|
| Pantropical spotted dolphin | 581 (146) | 1.0 | 872 |
| Atlantic spotted dolphin | 1317 (331) | 2.4 | 1975 |
| Spinner dolphin | 34 (9) | 0.3[1] | 100 |
| Clymene dolphin | 0 | 0 | 100 |
| Striped dolphin | 0 | 0 | 100 |
| Short-beaked common dolphin | | | 5 |
| Long-beaked common dolphin | | | 5 |
| Fraser's dolphin | 9 (2) | 6.7 | 100 |
| Risso's dolphin | 9 (2) | <0.1 | 10 |
| Melon-headed whale | 9 (2) | 0.2[1] | 15 |
| Pygmy killer whale | 0 | 0 | 15 |
| False killer whale | 479 (120) | N.A.[2] | 718 |
| Killer whale | 9 (2) | 0.1 | 10 |
| Short-finned pilot whale | 274 (69) | <0.1 | 410 |
| Long-finned pilot whale | 0 | 0 | 5 |
| *Mysticetes* | | | |
| North Atlantic right whale | 0 | 0 | 2 |
| Humpback whale | 0 | 0 | 2 |
| Minke whale | 0 | 0 | 2 |
| Bryde's whale | 0 | 0 | 5 |
| Sei whale | 0 | 0 | 2 |
| Fin whale | 0 | 0 | 2 |
| Blue whale | 0 | 0 | 2 |

[1]% of Gulf of Mexico population.
[2]N.A. = not available.

**Conclusions**

NMFS has determined that the impact of conducting the seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

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, the number of potential harassment takings is 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 low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

*Conclusions- Effects on Cetaceans*

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. In Arctic waters, some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen in the vicinity of seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes will sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to short-term avoidance of the area around the seismic operation, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. The best estimates for exposure to seismic sounds greater than or equal to 160 dB are 12142, 1317, and 581 for bottlenose, Atlantic spotted, and pantropical spotted dolphins, respectively (the most abundant delphinids in the proposed survey area). This represents between 1 and 9.4 percent of the North Atlantic populations of these species based on population estimates. However, surveys for these dolphin species have not been conducted for most of their range in the North Atlantic Ocean and adjacent waters. Therefore the true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are likely to be much less, as the population sizes are based on only a small fraction of their range and their actual population sizes are much larger.

In light of the type of take expected (Level B harassment) and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs and biological observers, the use of passive acoustics, ramp-ups, and power-downs and shut-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

**ESA**

NMFS issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or

result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

**NEPA**

The NSF made a Finding of No Significant Impact (FONSI) determination on October 2, 2003, based on information contained within its 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. NSF determined therefore, that an environmental impact statement would not be prepared. On December 16, 2003 (68 FR 70000), NMFS noted that the NSF had prepared an EA for the Yucatan Peninsula surveys and made this EA was 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 NSF's EA and determined that the NSF 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 LDEO for this activity. Based on this review and analysis, NMFS is adopting the NSF EA under 40 CFR 1506.3 and has made its own FONSI. A copy of the NSF 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 a seismic surveys in the northern Yucatan Peninsula in the Gulf of Mexico to LDEO for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: March 23, 2004.

**Laurie K. Allen,**

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

[FR Doc. 04–6970 Filed 3–26–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Survey of Supply Vendors; none; OMB Number 0704–[To Be Determined].

*Type of Request:* New collection.

*Number of Respondents:* 200.

*Responses Per Respondent:* 1.

*Annual Responses:* 200.

*Average Burden Per Response:* 1 hour.

*Annual Burden Hours:* 200.

*Needs and Uses:* The Defense Logistics Agency (DLA) is transforming its distribution business practices. The survey information will be used by DLA to help determine the extent to which shipments from contractor locations can be integrated into DLA's distribution practices.

Respondents are individuals/businesses who supply material to the Defense Logistics Agency in direct support of customer requirements or to be placed into stock for future requirements. The survey will seek information concerning each contractor's demographics, order management practices, shipping practices, costs and pricing, and utilization of technology.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6878 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Application for Establishment of Air Force Junior ROTC Unit; AFOATS Form 59; OMB Number 0701–0114.

*Type of Request:* Reinstatement.

*Number of Respondent's:* 40.

*Responses Per Respondent:* 1.

*Annual Responses:* 40.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 20.

*Needs and Uses:* The information collection requirement is necessary to obtain information about schools that would like to host an Air Force Junior ROTC unit. Respondents are high school officials who provide information about their school. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit.

*Affected Public:* Not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6879 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**