

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 092403A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for a renewal of its Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to seismic retrofit construction of the Richmond-San Rafael Bridge (the Bridge), San Francisco Bay (SFB), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to renew a small take authorization to CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

DATES: Comments and information must be received no later than November 3, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application, Environmental Assessment (EA) and/or monitoring reports may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, ext 128.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of

marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

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 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 [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 authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On September 22, 2003, NMFS received a letter from CALTRANS, requesting reauthorization of an IHA that was first issued to it on December 16, 1997 (62 FR 67045, December 23, 1997), was renewed on January 8, 2000 (65 FR 2375, January 14, 2000), September 19, 2001 (66 FR 49165, September 19, 2001) and September 23, 2002 (67 FR 61323, September 30, 2002).

The renewed authorization request is for the possible harassment of small

numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend until the year 2005. A detailed description of the work planned is contained in the Final Natural Environmental Study/Biological Assessment for the Richmond-San Rafael Bridge Seismic Retrofit Project (CALTRANS, 1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. Because seismic retrofit construction between piers 52 and 57 has the potential to disturb harbor seals hauled out on Castro Rocks, an IHA is warranted. The duration for the seismic retrofit of foundation and towers on piers 52 through 57, which began this year, will take approximately 7 to 8 months to complete.

Description of Habitat and Marine Mammals Affected by the Activity

A description of SFB ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and in CALTRANS (1996). Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 (A rock) and end at approximately 250 ft (76 m) from pier 53 (F rock). The chain of rocks is exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Forney *et al.* (2000, 2001), which are available at the following URL: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html. Please refer to these documents for information on these species. The marine mammals likely to be affected by work in the Bridge area

are limited to harbor seals and California sea lions.

The harbor seal is the only marine mammal species expected to be found regularly in the Bridge area. A detailed description of harbor seals was provided in the 1997 notification of proposed authorization (62 FR 46480, September 3, 1997) with corrections and clarifications provided in the notice of IHA issuance (62 FR 67045, December 23, 1997). This information is not repeated here, but may be found in the **Federal Register** notices mentioned previously in this document.

It should be noted that pups are born in mid- to late-March, peak numbers of pups are observed in early May, and, by the first week in June, all pups are weaned (Kopec and Harvey, 1995). Estimated pup counts at Castro Rocks were 35 in 1999, 40 in 2000 and 40 in 2001 (A. Bohorquez pers. comm in Green et al., 2001). This represents approximately 22–24 percent of the pups born in SFB.

The California sea lion primarily uses the Central SFB area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have only a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Marine mammal monitoring under previous IHAs has been conducted at Castro Rocks and at two “control” haul-out locations in SFB, Mowry Slough and Yerba Buena Island (Green *et al.*, 2001, 2002) since 1998. To date, over 10,000 hours of observations have been conducted at these sites with two-thirds of those hours at Castro Rocks. While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to be Level B harassment. At Castro Rocks, of all flush disturbances monitored during the day, the major harassment sources were watercraft (e.g. motorboats, sailboats, tankers, kayaks and jet skis) with 0.128 disturbances/hr field time (d/hr); wildlife (seals and birds) with 0.075 d/hr; anthropogenic (debris, workmen on bridge with 0.040 d/hr; and “research” with 0.021 d/hr. Construction activities

resulted in 0.0165 d/hr. There were fewer flushes observed at night. More detailed information on the extent of take by harassment at Castro Rocks by activities other than the requested authorization, please refer to Green *et al.* (2002).

During the work period (August 1 through February 14), the incidental harassment of harbor seals and, on rare occasions, California sea lions is expected to occur on a daily basis upon initiation of the retrofit work. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Monitoring by Green *et al.* (2002) indicates that although overall seal numbers each month of the year are not significantly different across years, there are differences in subsite use by seals at Castro Rocks during both the daytime and nighttime. For example, the average number of seals hauled out on Castro Rocks (rocks A and C) during the fall of 2001 (when construction activity was taking place within the area of the haul-out site) was significantly different than the average number of seals hauled out on Castro Rocks during 1998–2000, prior to the construction period. It was noted that fewer seals were using rock A, located closest to the Bridge and more seals were hauling out on rock C which was located farther from the Bridge than rock A. The number of seals hauled out on rocks B and E was not significantly different between years while the number hauled out on rocks D and F was greater during the fall of 2000 and 2001 than 1998 and 1999. For a more detailed discussion on the distribution of harbor seals during the work and non-work periods and levels of impact by various natural and anthropogenic disturbance sources, please see Green *et al.* (2002) which is available upon request (see **ADDRESSES**).

Although California sea lions have been shown to react to pile driving noise by porpoising quickly away from the site (SRS Technologies, 2001), it is not known whether they will react to general construction noise and move away from the rocks during construction activities. However, sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected.

Potential Effects on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a

harbor seal haulout and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise have been implemented by CALTRANS as part of their activity. General restrictions include: with the exception of the Concrete Trestle Section, no piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m.; an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m.; and, a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, previous authorizations (1997–2001) required CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed by CALTRANS employees or contractors, during the year within the exclusion zone located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic to the greatest extent practicable in the exclusion zone when conducting construction activities between piers 52 and 57. From 1997 through September 2002, the boundary of the exclusion zone was rectangular in shape (1700 ft (518 m) by 800 ft (244 m)), completely enclosing Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone was located 300 ft (91 m) from the most northern tip of Castro Rocks, and the southern boundary was located 300 ft (91 m) from the most southern tip of Castro Rocks. The eastern boundary was

located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary was located 300 ft (91 m) from the most western tip of Castro Rocks. The exclusion zone is restricted as a controlled access area and is marked off with buoys and warning signs for the entire year.

In 2002 (see 67 FR 61323, September 30, 2002), NMFS modified the Work/Boat Exclusion Zone (W/BEZ) so that the eastern boundary was shifted from 100 ft (30.5 m) east of Pier 57 to 100 ft (30.5 m) west of Pier 57. This maintains a 400-ft (122-m) "buffer" as opposed to the previous 600-ft (183-m) buffer, between the work at Pier 57 and "A" rock. This modification is reasonable based on observed seal behavior during the construction within the W/BEZ that harbor seals adjusted their location preference on Castro Rocks by moving westerly to rocks further from the construction (see discussion previously in this document). However, CALTRANS notes that there has not been a statistically significant change in the total numbers of animals that utilize the Castro Rocks haulout.

In addition to shifting the W/BEZ, in 2002, NMFS modified the period in which work was allowed in the vicinity of Castro Rocks from February 15th to March 1st. CALTRANS requested this modification due to unforeseen circumstances affecting the ability of the contractor to the seismic retrofit work on Pier 57. This modification allows the contractor to complete the work this coming season and to stay under budget. The previous Work Closure Period (February 15–July 31) was designed to encompass the entire harbor seals pupping and breeding seasons and nearly the entire molting season at Castro Rocks. Thus, the Work Closure Period included the entire pupping season at Castro Rocks and a substantial pre-pupping period when females are moving into pupping areas (see 62 FR 67045, December 23, 1997). Because moving the Work Closure Period from February 15th to March 1st still provides a 2-week window prior to the onset of successful pupping (March 15th), and because NMFS did not find scientific evidence indicating that female harbor seals need a "quiet period" from general noise in order to pup successfully, NMFS determined that shifting the Work Closure Period from February 15th to March 1st would not have a significant impact on harbor seal pupping.

In 2002, NMFS also modified the period in which work is allowed to start in the vicinity of Castro Rocks from August 1st to a new date of July 16th. As mentioned in previous documents,

newborn harbor seal pups are able to swim immediately after birth (Zeiner *et al.*, 1990) and pups are weaned by the first week of June. Therefore, terminating the Closure Period on July 16th is not expected to affect pup survival. Under authorizations issued prior to the current IHA, the July 31st ending date for the Work Closure Period was established to protect harbor seals during the molting season. However, those documents also noted that NMFS believed that it is likely that harbor seals evolved adaptive mechanisms to deal with exposure to the water during the molt. For example, on some harbor seal haul-outs (such as Castro Rocks) during the molting season seals must enter the water once or even twice a day due to tidal fluctuations limiting access to the haul-out. Also, since harbor seals lose hair in patches during the molt, they are never completely hairless and would not be as vulnerable to heat loss in the water during this period compared to other seals (e.g., elephant seals) that lose their all their hair at one time. Finally, NMFS notes that if the levels of harbor seal disturbance during the molt are relatively high, seals are likely to utilize other local haul-out sites during the molt (DeLong, R., pers. commun. 1997; Hanan, D., pers. commun. 1997; Harvey, J., pers. commun. 1997). Hanan (1996) found that although harbor seals tagged at an isolated southern California haul-out tended to exhibit site-fidelity during the molt, some seals were observed molting at other nearby haul-outs. Based on these reasons therefore, NMFS determined that terminating the Closure Period on July 16th would not significantly affect harbor seals in general or molting seals at Castro Rocks in particular.

Monitoring

NMFS will require CALTRANS to continue to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative haulout areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (July 16 through February 28) and the Closure Period Phase (March 1 through July 15). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will

be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior at Castro Rocks and at the alternative site(s) once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior, and collect appropriate data, at the alternative Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS will require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior, at Castro Rocks, at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week during this same period, the monitor will conduct an additional harbor seal census after midnight.

Reporting

Under previous IHAs, CALTRANS has provided monitoring reports (Green *et al.* (2001, 2002). The findings from these reports have been summarized previously in this document.

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, number of harbor seals with a red pelage, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the

haulout will also be provided. A draft interim report must be submitted to NMFS by April 30, 2004.

Because seismic retrofit activities may continue beyond the date of expiration of this IHA (presumably under a new IHA), a draft final report must be submitted to the Regional Administrator within 90 days after the expiration of this IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Richmond-San Rafael Bridge will not have a significant impact on the human environment. A copy of that EA, which includes the Finding of No Significant Impact (FONSI) is available upon request (see ADDRESSES). This action has not changed significantly from the action analyzed in the 1997 EA. Therefore, this proposed action is not expected to change the analysis or conclusion of the 1997 EA.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded upon completion of the comment period for this proposed action and consideration of those comments prior to a determination on issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of the seismic retrofit construction of the Bridge, as described in this document, should result, at worst, in the temporary modification in behavior by small numbers of harbor seals and, possibly, by small numbers of California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on

the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to renew an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Sought

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see ADDRESSES). Prior to submitting comments, NMFS recommends reviewers of this document read the responses to comments made previously (see 62 FR 67045, December 23, 1997; 65 FR 2375, January 14, 2000; 66 FR 49165, September 26, 2001; and 67 FR 61323, September 30, 2002) for this action, as NMFS does not intend to address these issues further without the submission of additional scientific information.

Dated: September 29, 2003.

Laurie K. Allen,

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

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BILLING CODE 3510-22-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003. Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 29, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the