Subject: public comment on federal register FW: stop killing marine mammals-you dont kill people - no reason to kill these dolphins whales eithr
From: usacitizen1 usacitizen1 <usacitizen1@live.com>
Date: Tue, 19 Apr 2011 15:39:03 -0400
To: ITP.Cody@noaa.gov, bluewater@bluewaternetwork.org, info@peta.org, info@oceana.org, info@opsociety.org, info@seashepherd.org
CC: foe@foe.org, info@wdc.greenpeace.org, info@idausa.org, humanelines@hsus.org, americanvoices@mail.house.gov, today@nbc.com

space vessel intends to kill whales dolphins off ca coast - no way shoudl this be done. if they can protect people from this, they should also not be killing whales or dolphins.
i also see that the population listing is inflated for the cal sea lions, trying to make their lives worthless. each life of theirs is worth a million dollars to me. each one of them is worth a million dollars to me. so that the navy needs to take steps to see that no marine mammals at all get killed from any of their rockets.
jean public address if required

[Federal Register Volume 76, Number 75 (Tuesday, April 19, 2011)]
[Notices]
[Pages 21862-21869]
From the Federal Register Online via the Government Printing Office [www.gpo.gov]
[FR Doc No: 2011-9459]

[[Page 21862]]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA074

Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from United Launch Alliance (ULA), for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting Delta Mariner operations, cargo unloading activities, and harbor maintenance activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to ULA to incidentally harass, by Level B harassment only, three species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than May 19, 2011.

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 713-2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. 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. Section 101(a)(5)(D) of the MMPA 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 public comment period, NMFS must either issue or deny the authorization. NMFS must publish a notice in the Federal Register within 30 days of its determination to issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ``harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on August 4, 2010, from ULA requesting the taking by harassment, of small numbers of marine mammals, incidental to conducting Delta Mariner harbor operations for one year. After addressing comments from NMFS, ULA modified its application and submitted a revised application on February 11, 2011. NMFS determined that application complete and adequate on March 29, 2011.

These activities (i.e., transport vessel operations, cargo movement activities, and harbor maintenance dredging) will support Delta IV/EELV launch activities from the Space Launch Complex at VAFB Harbor and would occur in the vicinity of a known pinniped haul out site (Small Haul-out Site 1) located at 34[deg] 33.192' N, 120[deg] 36.580' W.

Acoustic and visual stimuli generated by the use of heavy equipment during the Delta Mariner off-loading operations and the, cargo movement activities, the increased presence of personnel, and harbor maintenance dredging may have the potential to cause California sea lions (Zalophus californianus), Pacific harbor seals (Phoca vitulina), and Northern elephant seals (Mirounga angustirostris) hauled out on Small Haul-out Site 1 to flush into VAFB Harbor or to cause a short-term behavioral disturbance for marine mammals in the proposed area. These types of disturbances are the principal means of marine mammal taking associated with these activities and ULA has requested an authorization to take 1,089 Pacific harbor seals; 72 California sea lions; and 43 Northern elephant seals by Level B harassment only.

To date, NMFS has issued eight, 1-year, Incidental Harassment Authorizations (IHAs) to ULA for the conduct of the same activities from 2002 to 2010, with the last IHA expiring on September 3, 2010 (74 FR 46742, September 11, 2009). ULA did not

[[Page 21863]]

conduct any operations between 2003 and 2008, and accordingly, was not required to conduct any monitoring activities related to harbor maintenance or Delta Mariner operations. After a 6-year hiatus, ULA commenced harbor maintenance activities in July 2009. This is ULA's ninth request for an IHA and the monitoring results from the 2009 and 2010 operating seasons appear in the Proposed Monitoring section of this notice.

Description of the Specified Geographic Region

The proposed activities will take place in or near the VAFB harbor located on the central coast of California at 34[deg] 33' N, 120[deg] 36' W in the northeast Pacific Ocean. The harbor is approximately 2.5 miles (mi) (4.02 kilometers (km)) south of Point Arguello, CA and approximately 1 mi (1.61 km) south of the nearest marine mammal rookery.

Description of the Specified Activity

ULA proposes to conduct Delta IV/EELV activities (transport vessel operations, harbor maintenance dredging, and cargo movement activities) between June 6, 2011 and June 5, 2012. The Delta IV/EELV launch vehicle is comprised of a common booster core (CBC), an upper stage, and a payload fairing. The size of the CBC requires it to be transported to the VAFB launch site by a specially designed vessel, the Delta Mariner. To allow safe operation of the Delta Mariner, maintenance dredging within a harbor located in Zone 6 of the Western Space and Missile Center (WSMC) in the Pacific Ocean (33 CFR 334.1130(a)(2)(vi)), ULA requires that the harbor undergo maintenance on a periodic basis.

Delta Mariner Operations

The Delta Mariner is a 312-foot (ft) (95.1-meter (m)) long, 84-ft (25.6-m) wide, steel-hulled, ocean-going vessel capable of operating at an 8-ft (2.4-m) draft. It is a roll-on, roll-off, self-propelled ship with an enclosed watertight cargo area, a superstructure forward, and a ramp at the vessel's stern.

Delta Mariner off-loading operations and associated cargo movements within the harbor would occur at a maximum frequency of four times per year. The 8,000-horsepower vessel would enter the harbor stern first at 1.5 to 2 knots (1.72 mi per hour (mph)) during daylight hours at high tide, approaching the wharf at less than 0.75 knot (less than one mph). At least one tugboat will always accompany the Delta Mariner during visits to the VAFB harbor. Departure will occur under the previously-stated conditions.

Harbor Maintenance Activities

ULA's must perform maintenance dredging annually or twice per year, depending on the hardware delivery schedule. To accommodate the Delta Mariner's draft, ULA would need to remove up to 5,000 cubic yards of sediment per dredging cycle. Dredging would involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. Dredge operations, from set-up to tear-down, would continue 24-hours a day for approximately 35 days.

ULA provides a more detailed description of the work proposed for 2011-2012 in the application and the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001) which are available upon request (see ADDRESSES).

Cargo Movement Activities

Removal of the CBC from the vessel requires the use of an elevating platform transporter (EPT). The EPT is powered by a diesel engine

manufactured by Daimler-Chrysler AG (Mercedes), model OM442A, 340HP. ULA would limit cargo unloading activities to periods of high tide. It takes approximately two hours to remove the first CBC from the cargo bay and six hours to remove a complement of three CBCs. It would take up to two additional hours to remove remaining cargo which may consist of two upper stages, one set of fairings, and one payload attach fitting. The total of 10 hours includes time required to move the flight hardware to the staging area. Flight hardware items, other than the CBCs, are packaged in containers equipped with retractable casters and tow bars. ULA would tow these containers off the vessel by a standard diesel truck tractor. Noise from the ground support equipment will be muted while inside the cargo bay and will be audible to marine mammals only during the time the equipment is in the harbor area. Cargo movement operations would occur for approximately 43 days (concurrent with the harbor maintenance activities).

Acoustic Source Specifications

A discussion of associated noise sources from the Delta Mariner, harbor maintenance equipment, and the EPT follows this section.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals ([mu]Pa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 [mu]Pa for under water, and the units for SPLs are dB re: 1 [mu]Pa. The commonly used reference pressure is 20 [mu]Pa for in air, and the units for SPLs are dB re: 20 [mu]Pa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Vessel Noise

Sources of noise from the Delta Mariner include ventilating propellers used for maneuvering the vessel into position and a brief sound from the cargo bay door when it becomes disengaged. ULA has not performed any in situ sound measurements outside the vessel.

Characteristics of the Harbor Maintenance and Cargo Movement Noise

ULA estimates that the noise levels emanating from within 50 ft (15.2 m) of the dredging and construction equipment (i.e., backhoe, water truck, and clamshell dredge and the cargo moving equipment (EPT and roll-off truck transporter) would range from 56 to 95 dB re: 20 [mu]Pa. ULA presents the equipment noise levels as well as measurements of the ambient background noise (35 to 48 dB re: 20 [mu]Pa at 250 ft (76.2 m)) measured at the dock area in Table 1.2-1 of the application.

Characteristics of the Elevating Platform Transporter

The received level of the EPT's diesel engine when running at mid-speed was approximately 85 dB re: 20 [mu]Pa at less

[[Page 21864]]

than 20 ft (less than 6.1 m). Prior to movement, the EPT operator sounds the horn to alert personnel in close proximity to the EPT that it is about to operate. The EPT operation procedure requires two short beeps of the horn (approximately one-third seconds each) prior to starting the ignition. Sound level measurements for the horn ranged from 84 to 112 dB re: 20 [mu]Pa measured at 25 ft (7.6 m) from the source and 62 to 70 dB re: 20 [mu]Pa measured at 200 ft (60.9 m) from the source. ULA recorded source levels from the side of the vehicle where the horn is mounted.

Characteristics of the Diesel Truck Tractor

The received sound level for the truck tractor was approximately 87 dB re: 20 [mu]Pa at 50 ft (15.2 m) while it towed the CBCs and remaining cargo items. NMFS expects that the Space Launch Complex structures will mute the noise generated by the ground support equipment while operations are conducted within the cargo bay.

Description of Marine Mammals in the Area of the Proposed Specified Activity

The marine mammal species most likely to be harassed incidental to conducting Delta Mariner operations, cargo unloading activities, and harbor maintenance activities at VAFB are the California sea lion, the Pacific Harbor seal, and the northern elephant seal. NMFS refers the public to Carretta et al., (2010) and Allen and Angliss (2010) for general information on these species which are presented below this section. The publications are available at the following URLs: http://www.nmfs.noaa.gov/pr/pdfs/sars/po2010_draft.pdf and http://www.nmfs.noaa.gov/pr/pdfs/sa

California Sea Lion

California sea lions are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The California sea lion includes three subspecies: Z. c. wollebaeki (on the Galapagos Islands), Z. c. japonicus (in Japan, but now thought to be extinct), and Z. c. californianus (found from southern Mexico to southwestern Canada; herein referred to as the California sea lion). The subspecies is comprised of three stocks: (1) The U.S. stock, beginning at the U.S./Mexico border extending northward into Canada; (2) the western Baja California stock, extending from the U.S./Mexico border to the southern tip of the Baja California peninsula; and (3) the Gulf of California stock, which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry et al., 1992). Adult males can weigh up to 860 pounds (lbs) (390 kilograms (kg)); and an adult female averages approximately 242 lbs (110 kg).

In 2009, the estimated population of the U.S. stock of California sea lion ranged from 141,842 to 238,000 animals and the maximum population growth rate was 6.52 percent when pup counts from El Ni[ntilde]o years (1983, 1984, 1992, 1993, 1998, and 2003) were removed

(Carretta et al., 2010).

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta et al., 2010). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML, 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Ni[ntilde]o) years, some females are found as far north as Washington and Oregon, presumably following prey.

The largest concentrations of California sea lions in the vicinity of VAFB occur at Lion Rock, an islet located at (34[deg]53' N, 120[deg]39' W) offshore of Point Sal, CA approximately 24 mi (38.6 km) north of the VAFB harbor. Historical observations have noted the presence of at least 100 California sea lions hauled out during any season at Lion Rock (Roest, 1995); small groups migrating south along the VAFB coastline commencing in April (Tetra Tech, 1997); juveniles hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997); and finally, large groups of sea lions migrating north along the VAFB coastline beginning in August (Tetra Tech, 1997). ULA has observed juvenile sea lions hauled-out with harbor seals along southern VAFB sites from July through September (Tetra Tech, 1997).

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: P. v. stejnegeri in the western North Pacific, near Japan, and P. v. richardsi in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including: the outer coastal waters of Oregon and Washington States; Washington State inland waters; and Alaska coastal and inland waters.

The estimated population of the California stock of Pacific harbor seals ranged from 31,600 to 34,233 animals and the maximum population growth rate was 3.5 percent (Carretta et al., 2010).

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry et al., 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups. The nearest harbor seal rookery relative to the operational area is at Rocky Point, CA approximately one mile (1.61 km) south of the harbor.

ULA estimates that the total population of harbor seals on VAFB is approximately 1,118 (maximum of 500 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (Thorson, 2001). The daily haul-out behavior of harbor seals along the southern VAFB coastline is primarily dependent on time of day. The highest numbers of seals haul-out between 1100 and 1600 hours and the seals will occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where ULA proposes to conduct Delta Mariner operations.

The maximum number of seals present during the 2009 Delta Mariner operations was 28, and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 animals per day when tidal

[[Page 21865]]

conditions were favorable for hauling out.

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska and as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000-2,500 ft (330-800 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart et al., 1994). Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber et al., 1991). The California breeding population is now demographically isolated from the Baja California population. The estimated population of the California stock of northern elephant seals ranged from 74,913 to 124,000 animals and the maximum population growth rate was 11.7 percent (Carretta et al., 2010).

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart et al., 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45oN (Stewart and Huber, 1993; Le Boeuf et al., 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

ULA reports that northern elephant seals do not breed in the VAFB harbor area nor on its offshore islets. However, some juvenile and sub-adult elephant seals, primarily immature males, regularly use some of the VAFB shoreline as haul-outs. The juvenile and sub-adult elephant seals do not haul out in the VAFB harbor area.

ULA has no verified records of elephant seals on VAFB prior to 1998. In 2004, ULA counted a maximum of 188 elephant seals in VAFB; however, they consider this observation to be an outlier, as most on-site surveys have counted less than 10 individuals.

Other Marine Mammals in the Proposed Action Area

There are several endangered cetaceans that have the potential to transit in the vicinity of the VAFB harbor including the short-beaked common dolphin (Delphinus delphis), the Pacific white-sided dolphin (Lagenorhynchus obliquidens), and the gray whale (Eschrichtius robustus). NMFS will not consider these species further in this proposed IHA notice as they are typically found farther offshore of the VAFB harbor and are unlikely or rare in the proposed action area.

All of the aforementioned species are found farther offshore than the proposed action area and are not likely to be affected by the Delta Mariner operations. Accordingly, NMFS will not consider these species in greater detail.

Other species of pinnipeds species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by ULA's activities. These three species are: the northern fur seal (Callorhinus ursinus), Guadalupe fur seal (Arctocephalus townsendi), and Steller sea lion (Eumetopias jubatus). Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and distribution of these species can be found in the NMFS Stock Assessment Reports at http://www.nmfs.noaa.gov/pr/sars/.

California (southern) sea otters (Enhydra lutris nereis) are listed as threatened under the ESA and categorized as depleted under the MMPA. The U.S. Fish and Wildlife Service manages this species and NMFS will not consider this species in greater detail within this notice. The proposed IHA will only address requested take authorizations for pinnipeds.

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: the use of heavy equipment during the Delta Mariner off-loading operations and harbor dredging and the increased presence of personnel may have the potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Based on the measured sounds of construction equipment, such as might be used during ULA's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dB re: 20 [mu]Pa of noise would be approximately 72 dB re: 20 [mu]Pa at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dB re: 20 [mu]Pa, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately \1/3\ of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84-112 dB re: 20 [mu]Pa at 25 ft (7.6 m) away and 62-70 dB re: 20 [mu]Pa at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35-48 dB re: 20 [mu]Pa (Acentech, 1998; EPA, 1971).

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

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

[[Page 21866]]

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

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to recreational fishing activities, which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks, and there was only one incident of a head alert reaction. Further, the report from the December 2002 dredging activities shows that the number of Pacific harbor seals ranged from zero to 19, and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts, although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

The monitoring report from the 2009 season (July 8 through Sept 21) notes that Pacific harbor seals hauled out in the vicinity were more responsive to visual disturbances than to auditory disturbances. ULA did not observe any behavioral reactions of the harbor seals to equipment start-up. However, observers noted that harbor seals present slowly flushed when they could see equipment moving from their vantage point in the haulout area. On five occasions, harbor seals showed head alerts and on eight occasions, harbor seals entered the water.

NMFS would expect the pinnipeds to return to a haulout site within 60 min of the disturbance (Allen et al., 1985). The effects to pinnipeds appear at the most to displace the animals temporarily from

their haul out sites and NMFS does not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of harbor maintenance and Delta Mariner operations.

Finally, no operations would occur on pinniped rookeries; therefore, NMFS does not expect mother and pup separation or crushing of pups to occur.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the ``Proposed Mitigation'' and ``Proposed Monitoring and Reporting'' sections) which, as noted are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Habitat

NMFS does not anticipate that the proposed operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (i.e. fish and invertebrates). NMFS does not anticipate that there would be any physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible which NMFS considered in further detail earlier in this document, as behavioral modification.

Proposed Mitigation

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

ULA has based the proposed mitigation measures described herein, to be implemented for the proposed operations, on the following:

(1) Protocols used during previous operations as approved by NMFS; and

(2) Previous IHA applications and IHAs approved and authorized by NMFS.

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA/and or its designees propose to implement the following mitigating measures for marine mammals:

(1) If activities occur during nighttime hours, ULA will turn on lighting equipment before dusk. The lights would remain on for the entire night to avoid startling pinnipeds.

(2) Initiate operations before dusk.

(3) Keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, ULA would initiate a gradual start-up of activities to ensure a gradual increase in noise levels.

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

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

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

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

[[Page 21867]]

Proposed Monitoring

Summary of Previous Monitoring

ULA complied with the mitigation and monitoring required under the previous authorization for the 2009 and 2010 seasons. In compliance with both IHAs, ULA submitted a final report on the activities at VAFB harbor, covering the period of July 6 through September 21, 2009 and June 2 through 18, 2010. Each IHA required ULA to conduct baseline observations of pinnipeds in the project area prior to initiating project activities; conduct and record observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are 2 ft (0.61 m) or less (i.e., low enough for pinnipeds to haul-out); and conduct post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

During the effective dates of the 2009 IHA, ULA conducted 22 sessions of harbor maintenance and Delta Mariner operations which did not exceed the activity levels analyzed under the 2009 authorization. During the July 6 through August 7, 2009 monitoring period, both Pacific harbor seals and California sea lions hauled out within view of the harbor and dock where ULA conducted project activities. ULA reported that the maximum number of harbor seals hauled out each day ranged from one to 28 animals with most using the rocks approximately 540 to 570 ft (164.9 to 173.7 m) south of the harbor area. The maximum number of sea lions present ranged from one to two animals and both sea lions hauled out at either the breakwater and or on a beach southwest of the dock area. On four occasions, harbor seals exhibited head alerts to equipment movement and equipment noise. California sea lions exhibited head alerts on one occasion involving engine noise and engine movement. There was no indication of altered behavior of harbor seals

and sea lions in the water due to activities occurring on the dock or barge. ULA routinely observed pinnipeds rafting or swimming within and around the harbor for the duration of the operations. During the September 17-21, 2009 monitoring period for activities associated with cargo delivery for the Delta Mariner, the only observations of pinnipeds hauled out occurred on September 20th. However, the operations concluded by the time that the tide had reached low enough levels (0.51 ft; 0.15 m) for pinnipeds to begin hauling out on the rocks. Table 1 summarizes the pinnipeds' reactions to project-related disturbances in 2009.

Table 1--Summary of Pinniped Reactions to Harbor Dredging and Delta Mariner Operations in 2009

2009 Season	Time	Species	Number hauled out	Disturbance	Head alert	Entered water
Jul 8	7:54	Pacific harbor seal...	10	Crane arm raised to vertical.	0	10
Jul 9	8:06	Pacific harbor seal...	2	Crane arm movement	0	2
Jul 10	7:22	Pacific harbor seal...	8	Crane arm movement	7	1
	7:25	.....	8	Crane arm movement	5	0
	7:26	.....	8	Crane arm movement	3	5
	7:31	.....	3	Crane dredges up segment of flexible pipe.	0	3
Jul 20	8:58	California sea lion...	1	Loader engine start and loader movement.	1	0
Jul 22	7:23	Pacific harbor seal...	23	Noise from excavator bucket startles a large number of pelicans.	12	11
Jul 24	7:16	Pacific harbor seal...	24	Excavator arm moved	0	24
Jul 27	9:11	California sea lion...	2	Workers walking on breakwater.	0	1

During the effective dates of the 2010 IHA, ULA conducted 6 sessions of harbor dredging and Delta Mariner operations which did not exceed the activity levels analyzed under the 2010 authorization. During the June 2 to 18, 2010 monitoring period, both Pacific harbor seals and California sea lions hauled out within view of the harbor and dock. For the 2010 season, ULA reported that the maximum number of harbor seals hauled out each day ranged from one to 14 animals with most using the rocks approximately 540 to 570 ft (164.9 to 173.7 m) to south of the harbor area. The maximum number of sea lions present ranged from one to two animals with both animals hauled out at the breakwater. Again, there was no indication of altered behavior of Pacific harbor seals and California sea lions in the water due to activities occurring on the dock or in the harbor. Similar to the observations reported for the 2009 season, ULA routinely observed pinnipeds rafting or swimming within and around the harbor for the duration of the project's activities. Table 2 summarizes pinniped reactions to project-related disturbances in 2010.

Table 2--Summary of Pinniped Reactions to Harbor Dredging and Delta Mariner Operations in 2010

2009 Season	Time	Species	Number hauled out	Disturbance	Head alert	Entered water
Jun 17	8:52	Pacific harbor seal...	4	Crane arm made loud noise..	1	2
	9:03	Pacific harbor seal...	4	Crane arm movement--flapping noise.	0	2

These results support NMFS' original findings that the mitigation measures set forth in the 2009 and 2010 IHAs effected the least practicable adverse impact on the species or stock.

For a complete record of all observations, NMFS refers the reader to the ULA monitoring reports available at http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.

[[Page 21868]]

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

As part of its 2002 application for an IHA, ULA provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for the 2011 IHA.

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

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

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

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

NMFS has reviewed the monitoring results from previous operations and has incorporated the results into the analysis of potential effects in this document.

Proposed Reporting

ULA will notify NMFS two weeks prior to initiation of each activity. After the completion of each activity, ULA will submit a draft final monitoring report to NMFS within 120 days to the Director of Office of Protected Resources at NMFS Headquarters. If ULA receives no comments from NMFS on the draft Final Monitoring Report, NMFS would consider the draft Final Monitoring Report to be the Final Monitoring Report.

The final report would provide dates, times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report would include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, ULA would

report the incident to NMFS immediately.
ULA will report all injured or dead marine mammals (regardless of cause) to NMFS as soon as practicable. The report should include the species or description of the animal, the condition of the animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ``harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and authorized as a result of the proposed harbor maintenance and Delta Mariner operations in the VAFB harbor. Based on ULA's previous monitoring reports, with the same activities conducted in the proposed operations area NMFS estimates that approximately 659 Pacific harbor seals, 38 California sea lions, and 5 northern elephant seals could be potentially affected by Level B behavioral harassment over the course of the proposed IHA. NMFS bases the estimates on historical pinniped survey counts from 2001 to 2009 and calculated takes by multiplying the average of the maximum abundance by 43 days. Thus, ULA requests an IHA to incidentally harass approximately 1,089 Pacific harbor seals (15 animals by 43 days), 72 California sea lions (2 animals by 43 days), and 43 northern elephant seals (1 animals by 43 days).
NMFS expects all of the potential takes to be Level B behavioral harassment only. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area due to wave inundation of the haulout area, NMFS expects no injury, serious injury, or mortality to occur.
Negligible Impact and Small Numbers Analysis and Determination
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.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to:
(1) The number of anticipated mortalities;
(2) The number and nature of anticipated injuries;
(3) The number, nature, and intensity, and duration of Level B harassment; and
(4) The context in which the takes occur.
As mentioned previously, NMFS estimates that three species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than two percent) relative to the population size.
NMFS does not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of ULA's proposed activities, and none are authorized. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed harbor maintenance and Delta Mariner operations to avoid the resultant acoustic and visual disturbances. However, NMFS anticipates only short-term behavioral disturbance due to the brief duration of the proposed activities; the availability of alternate areas near the VAFB harbor for pinnipeds to avoid the resultant noise from the maintenance and vessel operations; and that no operations would occur on pinniped rookeries. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival.
Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the impact of conducting proposed harbor maintenance and vessel operations June 2011 through June 2012, will result in the incidental take of small numbers of marine mammals, by Level B behavioral harassment only, and that the total taking from the ULA's proposed activities will have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

[[Page 21869]]

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

This action will not affect species listed under the ESA that are under NMFS' jurisdiction. VAFB formally consulted with the U.S. Fish and Wildlife Service in 1998 on the possible take of southern sea otters during ULA's harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the EELV Program is not likely to jeopardize the continued existence of the southern sea otter, and no injury or mortality is expected. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

National Environmental Policy Act (NEPA)

In 2001, the USAF prepared an Environmental Assessment (EA) for Harbor Activities Associated with the Delta IV Program at VAFB. In 2005, NMFS prepared an EA augmenting the information contained in the USAF EA and issued a Finding of No Significant Impact (FONSI) on the issuance of an IHA for ULA's harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). ULA's proposed activities and impacts for 2011-2012 are within the scope of NMFS' 2005 EA and FONSI. NMFS has again reviewed the 2005 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, intends to reaffirm the 2005 FONSI. A copy of the EA and the FONSI for this activity is available upon request (see ADDRESSES).

Dated: April 13, 2011.
James H. Lecky,
Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 2011-9459 Filed 4-18-11; 8:45 am]
BILLING CODE 3510-22-P