

Furthermore, 19 CFR p 301.5(e)(7) provides, in part, as follows:

Information provided in a resubmission that * * * contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application (emphasis added).

Consequently, in view of the applicant's own admission that the domestic instrument is capable of meeting its requirements, we conclude that a resubmission cannot establish, without introducing impermissible new purposes, that a scientifically equivalent domestic instrument is not available.

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 99-3692 Filed 2-12-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

University of Maryland, Baltimore; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98-051. *Applicant:* University of Maryland, Baltimore, Baltimore, MD 21201. *Instrument:* Data Acquisition and Analysis Workstation, Model ORA 2001. *Manufacturer:* Optical Imaging Europe GmbH. *Intended Use:* See notice at 63 FR 59283, November 3, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides an integrated hardware and software package designed for optical

imaging of intrinsic cortical signals based on a cooled CCD frame-transfer camera. The National Institutes of Health advises in its memorandum of December 11, 1998 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010599B]

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 renewal of an authorization to take small numbers of Pacific harbor seals and possibly California sea lions by harassment incidental to seismic retrofit construction of the Richmond-San Rafael Bridge, San Francisco Bay, CA (the Bridge). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to reauthorize CALTRANS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area for a period of 1 year.

DATES: Comments and information must be received no later than March 18, 1999.

ADDRESSES: Comments on the application should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, an Environmental Assessment (EA) and a list of references cited in this document may be obtained by writing to

this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (562) 980-4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce 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.

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."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) 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.

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

Summary of Request

On November 9, 1998, NMFS received an application from CALTRANS, requesting reauthorization of an Incidental Harassment Authorization (IHA) issued on December 16, 1997 (62 FR 6704, December 23, 1997). This authorization would be 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 through December 2001. A detailed description of the work planned is contained in 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. The construction duration for the seismic retrofit of foundation and towers on piers 52 through 57 will be approximately 7 to 8 months.

Although the seismic retrofit construction between piers 52 and 57 did not take place during 1998, because this work may potentially result in disturbance of pinnipeds at Castro Rocks, reauthorization of the IHA is warranted.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the San Francisco Bay ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and 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 and end at approximately 250 ft (76 m) from pier 53. 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 Barlow *et al.* (1995). The marine mammals likely to be found in the Bridge area are limited to the California sea lion and harbor seal.

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

The harbor seal is the only marine mammal species found in the Bridge area in significant numbers. A detailed description of harbor seals was provided in the 1997 notice of proposed authorization (62 FR 46480, September 3, 1997) and is not repeated here. Corrections and clarifications to the proposed authorization were provided in the notice of IHA issuance (62 FR 67045, December 23, 1997).

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 a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the work period, harbor seal and, on rare occasions, California sea lion incidental harassment is expected to occur on a daily basis upon initiation of the retrofit work. If harbor seals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular hauling out behavior. The number of seals disturbed will vary daily depending upon tidal elevations. It is expected that disturbance to harbor seals during peak periods of abundance will not occur since construction activities will not take place within the restricted work area during the peak period (see Mitigation).

Whether California sea lions will react to construction noise and move away from the rocks during construction activities is unknown. Sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, likely to be less affected.

Potential Effect on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haul out 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 haul out 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 proposed 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 will be implemented by CALTRANS as part of their proposed activity. General restrictions include: 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, NMFS proposes to require 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 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 in the exclusion zone when conducting construction activities between piers 52 and 57. The boundary of the exclusion zone is rectangular in shape (1700 ft (518 m) by 800 ft (244 m)) and completely encloses Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone will be located 250 ft (76 m) from the most northern tip of Castro Rocks, and the southern boundary will be located 250 ft (76 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary

will be located 300 ft (91 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year.

Monitoring

NMFS will require CALTRANS 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 hauling-out areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 through February 14) and the Closure Period Phase (February 15 through July 31). 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 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 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 at the alternative San Francisco Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior 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, the monitor will conduct an

additional harbor seal census after midnight.

Reporting

NMFS proposes to require CALTRANS to provide weekly reports to the Southwest 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 and sub-adults, number of females/males, number of redcoats, 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 final report must be submitted to the Southwest Regional Administrator no less than 90 days before the expiration of the CALTRANS IHA. A final report must be submitted to the Southwest Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft 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 haul-out 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 Bridge will not have a significant impact on the human environment. A copy of that EA is available upon request (see ADDRESSES).

Conclusions

NMFS has preliminarily determined that the short-term impact of a seismic retrofit construction of the Bridge will result, at worst, in a temporary modification in behavior by harbor seals and possibly by some California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant noise, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned earlier in this document.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to CALTRANS for the possible harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the above mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities 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 Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see ADDRESSES).

Dated: February 9, 1999.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 99-3681 Filed 2-12-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020999C]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's Advisory Panel (AP) and Scientific and Statistical Committee (SSC) will hold meetings.

DATES: The AP meeting will be held on March 2, 1999, and the SSC meeting will be held on March 3, 1999.

ADDRESSES: The AP meeting will be held at the Colony Hotel in Isla Verde, Carolina, PR. The SSC meeting will be held at the Villa Parguera Hotel, 304 St., Km. 3.3, La Parguera, Lajas, PR.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918-2577, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The AP and the SSC will meet to discuss the items contained in the following agenda: