section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; *see* section 703(a)(1) of the Act. Otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 18, 2009.

Carole Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Scope of the Investigation

Imports covered by this petition consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (''MgO'') by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti–slip treatments or metal casing) and regardless of whether or not anti–oxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides). Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

[FR Doc. E9–20493 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR07

Endangered Species; File No. 14396

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Delaware Department of Natural Resources and Environmental Control-Division of Fish and Wildlife, Dover, Delaware, has applied in due form for a permit to take shortnose sturgeon (Acipenser brevirostrum) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 24, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14396 from the list of available applications. These documents are also available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa*.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 14396.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant is seeking a five-year scientific research permit to conduct a study of shortnose sturgeon in the Delaware River. The primary study objective would be to locate and document nursery areas, individual movement patterns, seasonal movements, home ranges, and habitats of juvenile shortnose sturgeon through the use of telemetry. This focus would be in association with an ongoing Atlantic sturgeon (*Acipenser oxyrinchus oxyrhinchus*) study with similar objectives. Up to 200 shortnose sturgeon would be weighed, measured, examined for tags, marked with Passive Integrated Transponder (PIT) tags and Floy tags, and released. Up to 15 early stage juvenile shortnose sturgeon would also be anesthetized and implanted with acoustic transmitters if they are of suitable size. A total of one unintentional mortality is requested over the five year term of the project which is scheduled to take place from March 1 to December 15.

Dated: August 19, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–20491 Filed 8–24–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ20

Incidental Takes of Marine Mammals During Specified Activities; Marine Geophysical Survey in the Northeast Pacific Ocean, August–October, 2009

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

ACTION: Notice; issuance of incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, to take small numbers of marine mammals, by Level B harassment only, incidental to conducting a marine seismic survey in the northeast Pacific Ocean.

DATES: Effective August 19, 2009 through October 13, 2009.

ADDRESSES: A copy of the IHA and the application are available by writing 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 or by telephoning the

contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or by 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, Office of Protected Resources, NMFS, (301) 713–2289 ext 113.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals, for periods of not more than one year, 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. 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. 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''].

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. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) of the MMPA.

Summary of Request

On February 11, 2009, NMFS received an application from L-DEO for the taking by Level B harassment only, of small numbers of 33 species of marine mammals incidental to conducting a marine seismic survey within the Exclusive Economic Zone (EEZ) of Canada in the northeast Pacific Ocean during August through October 2009. L-DEO, with research funding from the NSF, is conducting the geophysical data acquisition activities. NMFS outlined the purpose of the research program in a previous notice for the proposed IHA (74 FR 21631, May 8, 2009).

Description of the Specified Activity

The planned survey will involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), a seismic research vessel owned by the NSF and operated by L-DEO. The proposed project is scheduled to commence on August 19, 2009, and scheduled to end on October 13, 2009. The vessel will depart Astoria, Oregon on August 19, 2009 for transit to the Endeavor MPA, between 47–48° N. and 128–130° W.

To obtain high-resolution three-dimensional (3D) structures of the Lau Basin's magmatic systems and thermal structures, the *Langseth* will deploy a towed array of 36 airguns with a total discharge volume of approximately 6,600 cubic inches (in^3). The array configuration consists of four identical linear arrays or strings, with 10 airguns on each string. L-DEO will distribute the four airgun strings across an approximate area of 24 x 16 meters (m) (79 x 52 feet (ft)) behind the *Langseth* which will tow the array approximately 50–100 m (164–328 ft) behind the vessel at a tow-depth of 9–15 m (29.5–49.2 ft). The airgun array will fire for a brief (0.1 second (s)) pulse every 180 s. The array will remain silent at all other times.

The seismic study (e.g., equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will take place in deep (between 1200 and 3000 m, 3,280 feet (ft) and 1.8 miles (mi)) water and will require approximately 10 days to complete 12 transects of variable lengths totaling 1800 km of survey lines. Data acquisition will include approximately 240 hours of airgun operation. Please see L-DEO's application for more detailed information. The exact dates of the activities will depend on logistics, weather conditions, and the need to repeat some lines if data quality is substandard.

L-DEO will conduct all geophysical data acquisition activities with on-board assistance by the scientists who have proposed the NSF-funded study. The scientific team consists of NSF, is conducting the geophysical data acquisition activities with onboard assistance by Drs. Toomey and Hooft from the University of Oregon, and Dr. Wilcock from the University of Washington. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

NMFS has provided a more detailed description of the authorized action, including vessel and acoustic source specifications, in a previous notice for the proposed IHA (74 FR 21631, May 8, 2009).

Safety Radii

The distance from the sound source at which an animal would be exposed to these different received sound levels may be estimated and is typically referred to as safety radii. These safety radii are specifically used to help NMFS estimate the number of marine mammals likely to be harassed by the proposed activity and in deciding how close a marine mammal may approach an operating sound source before the applicant will be required to power-down or shut down the sound source.

L-DEO's acoustic models predict received sound levels in relation to distance and direction from the 36–airgun array in order to estimate the safety radii around their operations. L-DEO's model is based on empirical data gathered during the acoustic calibration study of the R/V *Maurice Ewing*'s (*Ewing*) array of 20 airguns (total volume 8600 in^3) conducted in the northern Gulf of Mexico in 2003. L-DEO provides a more detailed description of the modeling effort and calculations of the safety radii in the previous notice for the proposed IHA (74 FR 21631, May 8, 2009), Section I of L-DEO's IHA

application, and in Appendix A of the Environmental Assessment report prepared by LGL Limited environmental research associates (LGL) on behalf of NSF. NMFS has determined that the foregoing data and studies represent the best scientific evidence available a the present time.

Using the modeled distances and various correction factors, Table 1 outlines the predicted distances at which three root mean square (rms) sound levels (190 decibels (dB), 180 dB, and 160 dB) are expected to be received from the 36–airgun array and a single airgun operating in water greater than 1000 m (3,820 ft) in depth.

Source and Volume	Tow Depth (m)	Predicted RMS Distances (m)		
		190 dB	180 dB	160 dB
Single Bolt airgun 40 in^3	6–15*	12	40	385
4 strings 36 airguns 6600 in^3	6	220	710	4670
	9	300	950	6000
	12	340	1120	6850
	15	380	1220	7690

*The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in^3 airgun; thus the predicted safety radii are essentially the same at each tow depth.

Comments and Responses

NMFS published a notice of receipt of the L-DEO application and proposed IHA in the **Federal Register** on May 8, 2009 (74 FR 21631). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission), Cetacean Society International (CSI); and the Wild at Heart Legal Defense Association (WAHLDA). Following are the comments from the Commission, CSI, WAHLDA and NMFS' responses.

Comment 1: The Commission recommends that NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones; as such monitoring is essential for determining whether animals are being taken in unanticipated ways and unexpected numbers.

Response: NMFS believes that the planned monitoring program will be sufficient to detect (using visual detection and passive acoustic monitoring (PAM)), with reasonable certainty, most marine mammals within or entering identified safety radii. This monitoring, along with the required mitigation measures (see below), will result in the least practicable adverse impact on the affected species or stocks and will result in a negligible impact on the affected species or stocks. The *Langseth* is utilizing a team of trained marine mammal observers (MMOs) to visually monitor marine mammals and conduct passive acoustic monitoring (PAM).

The *Langseth*'s high observation tower is a suitable platform for conducting marine mammal observations. When stationed on the observation platform, the MMO's eye level will be approximately 18 m (59 ft) above sea level, providing a panoramic view around the entire vessel. During the daytime, the MMO(s) will scan the area around the vessel systematically using reticle binoculars (e.g., 7 x 50 Fujinon), big-eye binoculars (25 x 150), and the naked eye. The platform of the *Langseth* is high enough that, in good weather, MMOs can see out to 8.9 nm (16.5 km, 10.2 mi). All of the 180–dB safety radii that MMOs will monitor during ramp-ups and power-downs are less than 2 km (1.1 nm, 1.2 mi).

MMOs will use night vision devices (NVDs) (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), during dusk or nighttime, when required. Finally, L-DEO will provide laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) to MMOs to assist with distance estimation. MMOs estimate that visual detection from the ship is between 150 and 250 m (492 and 820 ft) using NVDs and about 30 m (98.4 ft) with the naked eye, which are affected by ambient lighting conditions, sea state, and thermal factors.

The *Langseth* will complement visual observations of marine mammals with an acoustical monitoring program. L-DEO will use a PAM system to improve detection, identification, localization, and tracking of marine mammals. The acoustic monitoring will alert visual observers (if on duty) when vocalizing cetaceans are detected. When an MMO detects a vocalization while visual observations are in progress, the acoustic MMO will contact the visual MMO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to initiate a power down or shut down, if required.

The theoretical detection distance of this PAM system is tens of kilometers and it has reliable detection rates out to 3 km (1.6 nm) and more limited ability out to tens of kilometers. During the *Ewing*'s cruise in the Gulf of Mexico in 2003, MMOs detected marine mammals at a distance of approximately 10 km (5.4 nm) from the vessel and identified them to species level at approximately 5 km (2.7 nm) from the vessel, though the bridge of that vessel was only 11 m (36 ft) above the water (vs. the *Langseth*, which is 18 m (59 ft) above sea level).

The likelihood of MMOs visual detecting a marine mammal at night is significantly lower than the ability to detect any species during the day. However, the PAM operates equally as effective at night as during the day, and does not depend on good visibility.

The *Langseth* will not start up the airguns unless the MMO can visibly detect the safety range for the 30 minutes prior (i.e., not at night) to start up. In all cases at night, the *Langseth* will already be operating the airguns. NMFS believes that operating the airguns at night will cause many cetaceans to avoid the vessel; thus reducing the number of cetaceans likely to come within the safety radii. Additionally, all of the safety radii in deep water depths are smaller than 2 km (1.1 nm, 1.2 mi) and fall easily within the reliable detection capabilities of the PAM.

Comment 2: The Commission recommends that NMFS clarify the qualifier ''when feasible'' with respect to: (1) using two marine mammal visual observers to monitor the exclusion zone for marine mammals during daytime operations and nighttime start-ups of the airguns; and (2) using marine mammal visual observers during daytime periods to compare sighting rates and animal behavior during times when the seismic airguns are operating and times when they are not.

Response: NMFS considers whether a particular mitigation is capable of being effected, done, or executed (i.e., feasible). For this IHA, the qualifier ''feasible'' is only applicable when the seismic system is not operating. It does

not apply during seismic operations (Permit, P.5; Condition 8(a)(i).

NMFS' consideration of practicability includes (among other relevant considerations) economic and technological feasibility (see 50 CFR 216.104(a)(11)). NMFS believes that the IHA's mitigation and monitoring measures are complete to the fullest extent practicable, and ensure that the takings will be limited to harassment and will result in a negligible impact on the affected species or stocks of marine mammals.

The *Langseth* is utilizing a team of trained marine mammal observers (MMO) to both visually monitor from the high observation tower of the *Langseth* and to conduct PAM. L-DEO will utilize two (except during meal times), NMFS-qualified, vessel-based marine mammal visual observers (MMVO) to watch for and monitor marine mammals near the seismic source vessel during all daytime airgun operations and before and during start-ups of airguns day or night.

MMVOs will have access to reticle binoculars (7x50 Fujinon), big-eye binoculars (25x150), and night vision devices to scan the area around the vessel. MMVOs will alternate between binoculars and the naked eye to avoid eye fatigue. During all daytime periods, two MMVOs will be on effort from the observation town to monitor greater than 90 percent of the time. During mealtimes it is sometimes difficult to have two MMOs on effort, but at least one MMVO will be on watch during those brief scheduled times. Three MMOs are typically on watch at a time, and typically observe for one to three hours. Two MMVOs will also be on watch during all nighttime start-ups of the seismic airguns. A third MMO will be monitoring the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area.

Comment 3: The Commission recommends that the monitoring period prior to the initiation of seismic activities and prior to the resumption of airgun activities after a power-down be extended to one hour.

Response: NMFS believes that 30 minutes is an adequate length of time for monitoring prior to the start-up of airguns. The IHA requires that the MMOs monitor the area for at least 30 minutes prior to starting the airgun array (day or night) to ensure that no marine mammals are seen within the safety zone before a seismic survey commences. The *Langseth*'s ramp up protocol begins with the smallest gun in the array and adds additional airguns in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5–min period over a total duration of 20–30 minutes. Thus, the total time of monitoring prior to start-up of any but the smallest array is effectively longer than 30 minutes. In many cases MMOs are making observations during times when sonar is not being operated and will actually be observing the area prior to the 30–minute observation period.

Comment 4: The Commission recommends that NMFS require that observations be made during all ramp-up procedures to gather the data needed to analyze and provide a report on the effectiveness of this method as a mitigation measure.

Response: The IHA requires L-DEO to submit a draft and final report on all activities and monitoring results to the NMFS, Office of Protected Resources, within 90 days after the expiration of the IHA. NMFS will post the report at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

This report: (1) must include an estimate of the number (by species) of marine mammals that are known to have been exposed to the seismic activity (visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (2) must also include an estimate of the number of marine mammals that may have been exposed to the seismic activity at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of the nature of the probable consequences of that exposure on the individuals that have been exposed.

NMFS has asked NSF and L-DEO to gather all data that could potentially provide information regarding effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low numbers of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up. *Comment 5:* It is expected that Canada will have consulted and commented on this proposal, and CSI respectfully requests a link to those documents for review.

Response: NMFS received no comments from the Canadian government or from any Canadian organization during the public comment period. However, the terms and conditions of the IHA encourage NSF to coordinate with the Canadian government regarding the proposed seismic activity.

Comment 6: While not relevant to the MMPA, it should be noted that 12 species found nowhere else in the world have been identified at the Endeavour Hydrothermal Vents. Given that the potential for deleterious acoustic impacts on invertebrates from the L-DEO survey is almost totally unknown, CSI specifically requests that NMFS require L-DEO and the NSF to support a survey of the site sufficient to document whether or not these extremely limited species were impacted by the experiment.

Response: NMFS' support of a post-seismic survey of invertebrates is not germane to this Federal action under the MMPA. NMFS acknowledges that at least 12 species are endemic to the Endeavour site. However, the area is dynamic, and the natural variability within the hydrothermal vents is high. Although OBS placement will disrupt a very small area of seafloor habitat and may disturb benthic invertebrates, the impacts are expected to be localized and transitory. NMFS does not expect that the placement of OBS would have adverse effects beyond naturally occurring changes in this environment, and any effects of the planned activity on ocean and coastal habitats are expected to be negligible.

NSF's EA (and associated report) analyzed the potential for the seismic survey activity to affect ecosystem features and biodiversity components, including fish, invertebrates, seabirds, and sea turtles. NMFS' evaluation indicates that any direct or indirect effects of the action would not result in a substantial impact on biodiversity or ecosystem function. In particular, the potential for effects to these resources are considered here with regard to the potential effects on diversity or functions that may serve as essential components of marine mammal habitats. Most effects are considered to be short-term and unlikely to affect normal ecosystem function or predatory/prey relationships; therefore, NMFS believes that there will not be a substantial impact on marine life biodiversity associated with the Endeavor hydrothermal vent, the Endeavor MPA, or on the normal function of the nearshore or offshore environment.

Comment 7: The time between NMFS' first awareness of an L-DEO application and the start of the scheduled survey does not allow for significant changes to the operation without extraordinary economic hardship on the applicant, and that creates pressure on NMFS to

authorize operations based on cost. CSI and others question whether this economic and practical pressure might influence NMFS' final decision relating to an IHA; might a project be authorized to continue, despite a problem, because of the cost of fixing it?

Response: 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. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) of the MMPA.

The NMFS, OPR, Permits, Conservation, and Education Division has diligently processed L-DEO's application within the statutory timeframe (120 days) for an IHA under the MMPA. The Division deemed the application complete on May 1, 2009; published a notice of receipt and request for comments in the **Federal Register** on May 8, 2009 (74 FR 21631); and issued the IHA on August 19, 2009. NMFS received no public comments requesting L-DEO to significantly alter the survey's schedule or institute major operational changes.

L-DEO's proposed survey did not require substantial changes to the cruise plan or survey tracklines. As stated in this document, NMFS shall grant an IHA to L-DEO if NMFS finds that incidental taking of marine mammals 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 if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS evaluates each IHA application independent of the cost of the proposed action, as this is not relevant to NMFS' determination of negligible impact or unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses.

For previously authorized IHAs, NMFS has required applicants to reschedule cruises; to modify survey tracklines; incorporate new temporal and spatial avoidance requirements; and to institute more precautionary measures to mitigate against the potential effects of the action on marine mammals.

Comment 8: L-DEO should contract openly with regional authorities and experts during the initial planning and scheduling phase, thereby building the project around the ''best science'' available. This amplifies the importance of the public comment period beyond a mere statutory requirement.

Response: NMFS acknowledges CSI's request and has forwarded your comment to NSF and L-DEO. If a CSI representative requests to comment on the initial planning and scheduling phases, they should discuss this directly with a representative from NSF and L-DEO.

Comment 9: The Office of Protected Resources (OPR) has not processed the application fast enough so that necessary changes brought to light through the public comment period might be applied with less onerous scheduling and operational changes.

Response: The NMFS, OPR, Permits, Conservation, and Education Division has diligently processed L-DEO's application within the statutory timeframe (120 days) for an IHA under the MMPA. The Division deemed the application complete on May 1, 2009; published a notice of receipt and request for comments in the **Federal Register** on May 8, 2009 (74 FR 21631); and issued the IHA on August 19, 2009. NMFS received no public comments requesting L-DEO to significantly alter the survey's schedule or institute major operational changes.

Comment 10: CSI recognizes that OPR may be required to supplement an Application with an Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) section 7 consultation, Biological Opinion and Environmental Assessment, all of which take time. This ETOMO Application was received February 11, 2009, the **Federal Register** Notice was published May 8, 2009, and we doubt there is time between the June 8, 2009, close of public comments and the start date of August 19, 2009 for L-DEO to adjust to potentially required changes in an IHA brought to light within the comment period. From recent experience the IHA can be expected to be issued close to the start date, making changes even more onerous. In other words, will an IHA be authorized in spite of issues, because of the cost to make it right? CSI is not accusing either OPR or L-DEO, but we are asking that even the appearance of the potential be removed.

Response: See NMFS' response to Comment 9. NMFS disagrees with the commenter's views on the timeliness of processing of the application. The OPR received the application on February 11, 2009. However, the Permits, Conservation, and Education Division (PR1) deemed the application incomplete under the MMPA and requested additional information from L-DEO (See 50 CFR 216.104(b)(1) which states that NMFS must determine the adequacy and completeness of an application prior to initiating the public review process). PR1 deemed the application complete on May 1, 2009. Pursuant to the MMPA, NMFS published a notice of receipt and request for comments in the **Federal Register** on May 8, 2009 (74 FR 21631), within one week of determining that the application was complete. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii). NMFS issued the IHA on (August19, 2009) within the required MMPA statutory timeframe of 120 days.

Regarding the ESA section 7 consultation, the Office of Protected Resources, Endangered Species Division (PR3) determined that the information provided by the NSF and L-DEO was sufficient to initiate formal consultation under the ESA on April 16, 2009. On August 18, 2009, NMFS issued a Biological Opinion (BiOp) and concluded that the issuance of the IHA was not likely to jeopardize the continued existence of the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales. NMFS issued the BiOp within the ESA statutory timeframe of 135 days. NMFS included the BiOp's Terms and Conditions of the Incidental Take Statement as mitigation measures in the IHA.

Comment 11: The solution CSI respectfully asks both OPR and NMFS for is a longer base time between application and start date. It is clear that L-DEO will be at this for a long time, and schedules must be set for 2010 and beyond.

Response: See NMFS' responses to Comments 9 and 10.

Comment 12: L-DEO's current process depends almost entirely upon the validity of the assumptions and assessments from L-DEO's in-house and contracted analysis, which have been proven to be inadequate. Perhaps recognizing this, L-DEO requested consultations with the South Pacific Whale Research Consortium (SPWRC) before the Tonga survey, but demanded

confidentiality, which SPWRC refused. L-DEO Tonga went on anyway, without that expert assistance.

Response: NMFS cannot speak to L-DEO's consultations with the SPWRC and recommends that CSI should discuss their concerns with a representative from L-DEO.

Comment 13: The L-DEO process failed with the L-DEO TAIGER survey in Southeast Asia, as public comments were received from concerned regional authorities and experts about several issues. One issue required an amended IHA, and the project was delayed accordingly, but the literally last minute public process should not have been the impetus. L-DEO would have precluded the issues by contracting with the well-known experts that were forced to express their concerns only during the public comment period. Taiwan's renewed, potentially threatening interest in the project only came about because the regional experts were seeking ways to have their concerns noted. Why not just hire the local experts and start earlier?

Response: The Canadian ETOMO survey is a separate action from the TAIGER survey. NMFS acknowledges CSI's concerns and refers the commenter to 74 FR 41260, August 14, 2009, for information on the IHA for the L-DEO TAIGER survey.

Comment 14: The ETOMO Application should not be ''easy'' because there are no systematically collected data on cetacean distribution and abundance in the proposed survey region.

Response: NMFS recognizes that absence of evidence is not the same as having no effect or impact on the affected marine mammal species or stocks. However, NMFS is not relying solely on absence of evidence. All parties involved have used the best information currently available to analyze the impacts to marine mammals as shown in: (1) the **Federal Register** notice for the receipt of L-DEO's application (74 FR 21631, May 8, 2009); (2) the EA; (3) the BiOp and ITS; and (4) numerous and salient public comments received by NMFS during the public comment period. Based on the evidence cited, NMFS concludes that the proposed seismic surveys would have a negligible impact on the affected species or stocks of marine mammals and are not likely to jeopardize the continued existence of any ESA-listed species.

Comment 15: The absence of specific data elevates the value of Kristin Kaschner's Ph.D. thesis, ''*Modelling and mapping resource overlap between marine mammals and fisheries on a global scale,*'' (2004) which maps suitable habitat for marine mammals around the world, ranking the Relative Environmental Suitability (RES) for each species. Kaschner shows that the Endeavour MPA offers highly suitable habitat for several species for which the daylight visual observation mitigation measures are inadequate. She predicts that the habitat is likely to support sei and sperm whales, which were caught in the region historically. She predicts that the habitat is likely to support poorly studied beaked whales (especially Cuvier's [Ziphius cavirostris]), which are thought to be susceptible to seismic survey impacts. And she predicts that the study area offers good quality habitat for species known to be recovering from 20th century commercial whaling, namely fin, humpback and sperm whales. But this data is not ''real.''

Response: NMFS thanks the commenter for this information and considers all relevant public comments before making a determination on the issuance of the IHA. A detailed discussion of the potential effects of this action on marine mammal habitat, was included in the notice of the proposed IHA (74 FR 21631, May 8, 2009). Based on the discussion in the proposed IHA notice, the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks and will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

Please note that NMFS' Biological Opinion concludes that the issuance of the IHA was not likely to jeopardize the continued existence of the humpback), sei, fin, blue, and sperm (Physeter macrocephalus) whales.

Comment 16: While science continues to search for ways to get the necessary data, L-DEO and NSF will continue to believe that their seismic surveys have no significant effect. It is expected that NMFS will find ''that the taking will have a negligible impact on the species or stock(s)'' despite the lack of real information. The absence of proof of harm is not the same as proving that there is no harm.

Response: See NMFS' response to Comment 14.

Comment 17: First, it has not been adequately explained in the Draft Environmental Assessment why the ''No Action'' alternative might be rejected in favor of the project, which, according to the proponent's own assessment, has the potential to harass several thousand cetaceans, including eight species described in the notice as being listed as endangered under the U.S. Endangered Species Act. That the acquisition of data concerning one natural phenomenon (e.g. ''the sub-seafloor structure of volcanic and hydrothermal features that form as a result of movements of the Earth's plates'' (DEA, p2)) should increase the threat to the existence of another natural phenomenon (e.g. a species of whale) of equally great (if less generously funded) academic interest is an illogical and tragic course of action. It should be noted that it has not been proven that knowledge of the sub-seafloor structure is of greater long-term importance for the continuation of human life on Earth than the biodiversity upon which we are very much dependent.

Response: The commenter's statements on assessing the value of acquiring information on one natural phenomena (geophysical) versus another natural phenomena (biodiversity) are not germane to NMFS' federal action the issuance of an MMPA authorization to L-DEO. Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. Alternatives assessments are NMFS' responsibility under NEPA, not the MMPA. In that regard, the NSF's EA and associated EA report contain adequate information on the alternatives No Action, Another Time, and Preferred Action. The associated EA report provides a step-by-step analysis on how the NSF assessed the alternatives, starting with (and citing) the best scientific information available on marine mammal distribution and abundance and using those data to make conservative estimates on levels of take by harassment and reasonable assumptions on why no marine mammals are likely to be harassed by this survey.

Comment 18: The assessment carried out by LGL for this L-DEO project must be treated with caution given the very recent experience of the L-DEO seismic survey currently underway in the waters of southeast Asia, for which LGL prepared an EA that understated the numbers of cetaceans of certain species that might be exposed to airgun noise and the level of potential harassment, misquoted the status of at least one critically endangered population of cetaceans (the Eastern Taiwan Strait (ETS) Indo-Pacific humpback dolphins) and resulted in transect lines running

directly through the narrow habitat of the ETS humpback dolphins and the scheduling of surveys near the Philippines that coincided ''spatially and temporally with the northward migration of mothers with neonatal and other young calves'' (Anon, 2009), to cite a few of the concerns raised by scientists and NGOs during the comment period for that project (e.g. *http://www.nmfs.noaa.gov/pr/pdfs/permits/taiger_comments.pdf*).

Response: NMFS acknowledges WAHLDA's concerns and refers the commenter to 74 FR 41260, August 14, 2009, for information on the L-DEO TAIGER survey.

NMFS closely follows NEPA regulations and NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) before making a determination on whether it will adopt another Federal agency's NEPA document, or prepare its own. Critical to this determination is the quality of another agency's NEPA document, whether it fully addresses the action proposed by NMFS the issuance of an MMPA authorization to L-DEO, and whether NMFS' proposed action is significant as defined in 40 CFR 1508.27 and NAO 216–6, section 6.01. As noted in the proposed authorization notice (74 FR 21631, May 8, 2009), the DEA contained a complete description of the proposed action and identified alternatives to that action; a description of the affected environment; an assessment of impacts, including unavoidable impacts, indirect impacts and cumulative impacts; and the measures proposed to reduce impacts to the lowest level practicable. In accordance with NAO 216–6, NMFS has reviewed the information contained in NSF's EA, and associated EA report, and determined that, while it accurately and completely describes the alternatives and the potential impacts, endangered species and other marine life could be impacted by the survey activities. As a result, NMFS has identified additional mitigation measures (e.g., mandatory shut-downs for north Pacific right whales) which are reflected in the final IHA and the NMFS' Finding of No Significant Impact (FONSI).

Comment 19: An additional, independent scientific review body is urgently needed in order to improve the quality of environmental assessment and recommended actions for this and all other seismic surveys.

Response: NMFS acknowledges WAHLDA's request and has forwarded your comment to NSF and L-DEO.

Comment 20: The safety radii for this project are used to decide how close a marine mammal may approach an operating sound source before a power-down or shut down is required. With detection of marine mammals being dependent upon the success of visual and acoustic monitoring, it is clearly essential that both forms of monitoring are carried out in such a way as to maximize the potential of detection. However, the description of the monitoring plans described in the FR notice suggest once again that worryingly minimal efforts to detect cetaceans will be made.

Response: See NMFS' response to Comment 1. The *Langseth* is utilizing a team of trained (MMVOs) to both visually monitor from the high observation tower of the *Langseth* and to conduct passive acoustic monitoring. When stationed on the observation platform of the *Langseth*, the MMVO's eye level will be approximately 17.8 m (58.4 ft) above sea level, so the visible distance (in good weather) to the horizon is 8.9 nm (16.5 km) (the largest safety radii is 7.7 km (4.2 nm)). Big eyes are most effective at scanning the horizon (for blows), while 7 x 50 reticle binoculars are more effective closer in (MMVOs also scan the area with the naked eye). Additionally, MMVOs will have a good view in all directions around the entire vessel.

Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. The monitoring and mitigation measures set forth in the IHA ensure that there will be negligible impacts on the marine mammals. Cetaceans are expected, at most, to show an avoidance response to the seismic pulses. Mitigation measures such as visual marine mammal monitoring, and shut-downs when marine mammals are detected within the defined ranges should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Comment 21: With a minimum of only one marine mammal visual observer (MMVO) being required to be on duty during all daytime airgun operations, and only two observers being required to be on duty for only thirty minutes before and during ramp-ups (''and when possible at other times'' (DEA, p.3)) is clearly not a commitment) the chances of detecting cetaceans in the area (including the exclusion zone) within which they may be harassed (including level A and level B harassment) will be limited. Neither one nor two pairs of eyes will be capable of effectively scanning all areas around the *Langseth* simultaneously for cetaceans and turtles that is, if the aim of this measure truly is to attempt to minimize impacts on cetaceans and turtles. There should at least be a sufficient number of qualified, experienced visual observers to simultaneously cover all areas of water within the safety radii on duty during all periods of use of noise-generating seismic survey equipment (including before and during ramp-ups and at all other times of use).

Response: The IHA requires L-DEO to utilize two (except during meal times), NMFS-qualified, vessel-based marine mammal visual observers (MMVO) to watch for and monitor marine mammals near the seismic source vessel during all daytime airgun operations and before and during start-ups of airguns day or night. See NMFS' response to Comments 1 and 2 for a discussion of visual and acoustic monitoring of the safety radii.

Comment 22: The idea that passive acoustic monitoring (PAM) should be used during the day and night ''when practicable'' (DEA, p. 3) again suggests a reluctance to commit to applying these measures to their greatest capability, and a level of leniency that leaves room for almost unlimited exceptions. If L-DEO is serious about carrying out this seismic survey at the risk of harassing more than thirty marine mammal species and intends to attempt to mitigate potential impacts to the (already extremely limited) extent that it can, it should at least be committed to use PAM at all times during the survey, with no exceptions. (The operators' need for rest, food or other activities can be dealt with by increasing the number of (qualified and experienced) staff on duty and should not be used as a justification for lower effort to detect cetaceans using PAM).

Response: The IHA requires that L-DEO operates the PAM system both during the day and at night. The requirement of PAM for marine mammal detection is intended to provide additional monitoring to the standard visual monitoring by qualified MMVOs. PAM is not to be solely used for marine mammal monitoring and detection for the survey and will not replace visual monitoring. NMFS believes that L-DEO will be able to effectively monitor out to the 180 dB isopleth.

Comment 23: More worrying still is the fact that there appears, once again, to be no restriction against using the seismic survey equipment in the dark or ''at night''. The continuation of seismic survey activity outside of daylight hours severely reduces the already limited possibility of detecting cetaceans in the

vicinity, and effectively reduces monitoring efforts to the use of PAM, which will obviously not detect cetaceans when they are not vocalizing and will at certain times only be used ''when practicable''. It is strongly recommended that no seismic survey activity be carried out outside of daylight hours during which the entire safety radii are visible.

Response: The IHA requires that L-DEO operates the PAM system both during the day and at night. Regarding cessation of seismic activity at night, L-DEO has considered this recommendation, and has decided that it is not feasible, as limiting the surveys to daytime only would either result in the loss of half of the data or would necessitate doubling the duration of the project. Doubling the duration of the surveys is not possible because the *Langseth* has other research commitments after the Endeavor cruise. For seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys, reduction in the total number of seismic cruises annually due to longer cruise durations, a need for additional vessels to conduct the seismic operations, or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

The IHA prohibits the start of the seismic source if the MMVOs cannot view the entire safety radius for any reason (darkness, fog, or rough seas). Thus, limiting seismic shooting to only daylight hours is unnecessary and unlikely to result in less Level B harassment to marine mammals than would conducting 24–hour survey operations. MMVOs using night vision devices (NVD) will be on watch during periods prior to and during a ramp-up at night. At other times during the night MMOs will be available, but it is not necessary or very effective for them to be on watch constantly. The use of PAM will improve the detection of marine mammals by indicating to the MMVOs when an animal is potentially near and prompting a power-down or shut-down when necessary. Marine mammals are unlikely to be injured, seriously injured or killed by the noise from approaching seismic arrays nor is it authorized.

Because of the need to keep a vessel at-speed in order to successfully tow the hydrophone streamers, the vessel would need to be underway throughout the night whether or not the airguns are fired at night. Additional down-time could be anticipated each day as the vessel maneuvers all night to come back to the shut-down location 30 minutes after daylight. This is unlikely to be successful very often and will likely result in additional time needed for surveys to be completed.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely low impact of the activity (given the required monitoring and mitigation measures), NMFS has determined that the IHA's requirements will ensure that the activity will have the least practicable impact on the affected species or stocks for the following reasons. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array.

Comment 24: The suggestion in the DEA that ''additional research studies planned on the vessel for 2009 and beyond'' should be a major deciding factor in whether the survey can be rescheduled (which was also used as an argument to support night-time surveys for the SE Asia seismic survey) is not considered a scientifically sound or otherwise reasonable justification for reducing already limited impact mitigation measures. Scheduling should be based on the necessary impact mitigation measures, not vice versa.

Response: Under section 101(a)(5)(D) of the MMPA, NMFS is required to determine whether the taking by the applicant's specified activity will have a negligible impact on the affected marine mammal species or population stocks. NMFS believes that L-DEO's revised survey as well as the implementation of the required monitoring and mitigation measures described in the IHA will have a negligible impact on the affected species or stocks of marine mammals in the study area.

As discussed in the EA report, the scheduling of the *Langseth* makes the best use of the vessel to support NSF's science mission. In the EA, NSF concluded that L-DEO rescheduling the survey to an alternative time would offer minimal advantages or disadvantages at the Endeavor location. Thus, for the reasons stated throughout the text of this notice, NMFS believes that the agency is in compliance with both the MMPA and NEPA.

Description of Marine Mammals in the Activity Area

Thirty-three marine mammal species may occur off the coast of British Columbia, Canada, including 20 odontocetes (toothed cetaceans), 7 mysticetes (baleen whales), 5 pinnipeds, and the sea otter (Enhydra sp.). In the United States, sea otters are managed by the U.S. Fish and Wildlife Service (USFWS) and are unlikely to be encountered in or near the Endeavor Marine Protected Area where seismic operations will occur, and are, therefore, not addressed further in this document. Eight of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA), including the Steller sea lion (*Eumetopias jubatus*), the humpback sei, fin, blue, North Pacific right (Eubalena japonica), sperm, and Southern Resident killer (*Orcinus orca*) whales.

This IHA will only address requested take authorizations for cetaceans and pinnipeds. Table 2 below outlines the species, their habitat and abundance in the proposed survey area, and the estimated exposure levels. Additional information regarding the status and distribution of the marine mammals in the area as well as how L-DEO calculated the densities were included in a previous notice for the proposed IHA (74 FR 21631, May 8, 2009) and in Sections III and IV of L-DEO's application.

Species	Habitat	Abundance in the NE Pacific	Occurrence in the Survey Area	Estimated Number of Individuals Exposed to Sound Levels ≥160 dB	Approx. Percent of Regional Population
North Pacific right whale*	Coastal and shelf waters	100–200	Rare and unlikely	0	0
Humpback whale*	Coastal waters	>6000	Uncommon	6	0.10
Minke whale	Coastal and shelf waters	9000	Uncommon	5	0.06
Sei whale*	Pelagic	7260 - 12,620	Uncommon	1	0.01

Species	Habitat	Abundance in the NE Pacific	Occurrence in the Survey Area	Estimated Number of Individuals Exposed to Sound Levels ≥160 dB	Approx. Percent of Regional Population
Fin whale*	Pelagic, shelf and coastal waters	13,620–18,680	Uncommon	8	0.05
Blue whale*	Pelagic, shelf and inshore waters	1186	Uncommon	2	0.14
Sperm whale*	Pelagic	24,000	Uncommon	10	0.04
Pygmy sperm whale	Deep waters off the shelf	Not available	Common	9	Not available
Dwarf Sperm whale	Deep waters off the shelf	Not available	Uncommon	0	0.0
Baird's beaked whale	Deep waters and cont. slopes	6000	Common	13	0.21
Blainville's beaked whale	Deep waters and cont. slopes	603	Uncommon	2	0.28
Cuvier's beaked whale	Pelagic	20,000	Uncommon	0	0.0
Hubb's beaked whale	Deep waters and cont. slopes	421	Uncommon	2	0.40
Stejneger's beaked whale	Deep waters	421	Uncommon	2	0.40
Bottlenose dolphin	Coastal and offshore waters	3257	Rare	0	0.0
Striped dolphin	Pelagic	23,883	Rare	0	0.0
Short-beaked common dolphin	Coastal and offshore waters	487,622	Common	104	0.02
Pacific white-sided dolphin	Pelagic, shelf and slope waters	931,000	Common	181	0.02
Northern right-whale dolphin	Pelagic, shelf and slope waters	15,305	Common	142	0.93
Risso's dolphin	Pelagic	12,093	Common	95	0.78
False killer whale	Pelagic	Not available	Rare	0	NA
Killer whale	Widely distributed	8500	Uncommon	12	0.15
Short-finned pilot whale	Pelagic	160,200	Uncommon	0	00.0
Dall's porpoise	Offshore and nearshore waters	57,549	Common	1081	1.88
Northern fur seal	Coastal	721,935	Common	73	0.01
Total				1,748	

Table 2. Abundance, preferred habitat, and commonness of the marine mammal species that may be encountered during the proposed survey within the ETOMO survey area. The far right columns indicate the estimated number and percentage of the population of each species that may be exposed to sound levels ≥160 dB based on average density estimates. NMFS believes that, when mitigation measures are taken into consideration, the activity is likely to result in take of numbers of animals less than those indicated by the column titled Estimated Number of Individuals Exposed to Sound Levels ≥160 dB.

* Federally listed endangered species.

Potential Effects of the Proposed Activity on Marine Mammals

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.*, 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but is expected to be localized and short-term.

The notice of the proposed IHA (74 FR 21631, May 8, 2009) included a discussion of the effects of sounds from airguns on mysticetes (baleen whales), odontocetes (toothed whales), and pinnipeds including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels is discussed in Appendix B of L-DEO's application.

The notice of the proposed IHA also included a discussion of the potential effects of the multibeam echosounder (MBES) and the sub-bottom profiler (SBP). Because of the shape of the beams of these sources and their power, NMFS believes it unlikely that marine mammals will be exposed to either the MBES or the SBP at levels at or above those likely to cause harassment. Further, NMFS believes that the brief exposure of cetaceans or pinnipeds to few signals from the multi-beam bathymetric sonar system is not likely to result in the harassment of marine mammals.

Estimated Take by Incidental Harassment

The notice of the proposed IHA (74 FR 21631, May 8, 2009) included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey and the take estimates. Based on numbers of animals encountered during previous L-DEO seismic surveys, the likelihood of the successful implementation of the required mitigation measures, and the likelihood that some animals will avoid the area around the operating airguns, NMFS believes that L-DEO's airgun seismic testing program may result in the Level B harassment of some lower number of individual marine mammals (a few times each) than is indicated by the column titled, Estimated Number of Individuals Exposed to Sound Levels ≥160 dB, in Table 2. L-DEO has asked for authorization for take of their ''best estimate'' of numbers for each species. Though NMFS believes that take of the requested numbers is unlikely, we still find these numbers small relative to the population sizes.

Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 1800 km of seismic surveys during the proposed seismic program in the ETOMO study area. The estimates of exposures to various sound levels assume that the surveys will be completed; in fact, the planned number of line-kilometers has been increased by 25 percent to accommodate lines that may need to be repeated, equipment testing, etc.

All anticipated ''takes by harassment'' authorized by this IHA are Level B harassment only, involving temporary changes in behavior. Because of the required implementation of mitigation measures and the likelihood that some cetaceans will avoid the area around the operating airguns of their own accord, NMFS does not expect any marine mammal to approach the sound source close enough to be injured (Level A harassment). Given these considerations, the predicted number of marine mammals that might be exposed to sounds at or greater than 160 dB may be somewhat overestimated. Thus, the following estimates of the numbers of marine mammals potentially exposed to sounds equal to or greater than 160 dB are precautionary, and probably overestimate the actual numbers of marine mammals that might be exposed.

Potential Effects on Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, was included in the notice of the proposed IHA (74 FR 21631, May 8, 2009). Based on the discussion in the proposed IHA notice, the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks and will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

The *Langseth* will deploy and retrieve approximately 64 OBS. The OBS anchors will remain upon equipment recovery. Although OBS placement will disrupt a very small area of seafloor habitat and may disturb benthic invertebrates, the impacts are expected to be localized and transitory. The vessel will deploy the OBS in such a way that creates the least disturbance to the area. Thus, it is not expected that the placement of OBS would have adverse effects beyond naturally occurring changes in this environment, and any effects of the planned activity on marine mammal habitats and food resources are expected to be negligible.

Monitoring and Mitigation Measures

Mitigation and monitoring measures required to be implemented for the proposed seismic survey have been developed and refined during previous L-DEO seismic survey studies and associated environmental assessments, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below this section.

Required mitigation measures include: (1) safety radii; (2) speed or course alteration, provided that doing so will not compromise operational safety requirements; (2) power-down procedures; (3) shutdown procedures; (4) ramp-up procedures; and (5) special procedures for nighttime and low-light hour operations.

Vessel-based Visual Monitoring

Vessel-based marine mammal visual observers (MMVOs) will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during start-ups of airguns at night. MMVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations and after an extended shutdown of the airguns (i.e., 9 minutes). When feasible, MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of animal abundance and behavior. Based on MMVO observations, airguns will be powered down, or if necessary, shut down completely (see below), when marine mammals are detected within or about to enter a designated safety radius corresponding to 180–dB isopleths. The MMVOs will continue to maintain watch to determine when the animal(s) are outside the safety radius, and airgun operations will not resume until the animal has left that zone. The predicted distances for the safety radii are listed according to the sound source, water depth, and received isopleth in Table 1.

During seismic operations in the northeast Pacific Ocean, at least three visual observers and one bioacoustician will be based aboard the *Langseth*. MMVOs will be appointed by L-DEO with NMFS' concurrence. At least two MMVOs (except during meal times) will monitor the safety radii for marine mammals during daytime operations and nighttime startups of the airguns. The use of two simultaneous MMVOs will increase the proportion of the animals present near the source vessel that are detected. The MMVO(s) will be on duty in shifts of duration no longer

than 4 hours. The vessel crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction regarding how to do so.

The *Langseth*'s high observation tower is a suitable platform for conducting marine mammal and turtle observations. When stationed on the observation platform, the MMOV's eye level will be approximately 18 m (59 ft) above sea level, providing a panoramic view around the entire vessel. During the daytime, the MMO(s) will scan the area around the vessel systematically using reticle binoculars (e.g., 7 x 50 Fujinon), big-eye binoculars (25 x 150), and the naked eye. The platform of the *Langseth* is high enough that, in good weather, MMOs can see out to 8.9 nm (16.5 km, 10.2 mi). All of the 180–dB safety radii that MMOs will monitor during ramp-ups and power-downs are less than 2 km (1.1 nm, 1.2 mi).

MMOs will use night vision devices (NVDs) (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), during dusk or nighttime, when required. Finally, L-DEO will provide laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) to MMOs to assist with distance estimation. MMOs estimate that visual detection from the ship is between 150 and 250 m (492 and 820 ft) using NVDs and about 30 m (98.4 ft) with the naked eye, which are affected by ambient lighting conditions, sea state, and thermal factors.

Passive Acoustic Monitoring

PAM will take place to complement the visual monitoring program. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, localization, and tracking of cetaceans. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. The acoustic monitoring will serve to alert visual observers when vocalizing cetaceans are detected. It will be monitored in real time so visual observers can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a low-noise, towed hydrophone array that is connected to the vessel by a ''hairy'' faired cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer lab where the acoustic station and signal condition and processing system will be located. The lead-in from the hydrophone array is approximately 400 m (1,312 ft) long, and the active part of the hydrophone is approximately 56 m (184 ft) long. The hydrophone array is typically towed at depths of 20 m (65.6 ft).

The towed hydrophone array will be monitored 24 hours per day while at the survey area during airgun operations and also during most periods when the *Langseth* is underway with the airguns not operating. One MMO and/or bioacoustician will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real time spectrographic display for frequency ranges produced by cetaceans. MMOs monitoring the acoustical data will be on shift for 1–6 hours. Of the three observers required on board, one will have primarily responsibility for PAM during the seismic survey. However, all MMOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected, the acoustic MMO will, if visual observations are in progress, contact the MMVO immediately to alert him/her to the presence of the vocalizing marine mammal(s) (if they have not already been seen), and to allow a power down or shutdown to be initiated, if required. The information regarding the call will be entered into a database. The data to be entered includes an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

Speed or Course Alteration - If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius or exclusion zone (EZ), the vessel's speed and/or direct course may be changed. This would be done if practicable while minimizing the effect on the planned science objectives. The activities and movements of the marine mammal(s) (relative to the seismic vessel) will then be closely monitored to determine whether the animals is approaching the applicable EZ. If the animal appears likely to enter the EZ, further mitigation actions will be taken, i.e., either further course alterations or a power down or shut down of the airguns. Typically, during seismic operations, major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, thus alternative mitigation measures (see below) will need to be implemented.

Power-down Procedures - A power-down involves reducing the number of operating airguns in use to minimize the exclusion zone, so that marine mammals are no longer in or about to enter this zone. A power-down of the airgun array to a reduced number of operating airguns may also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, one airgun will be operated. The continued operation of at least one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radii but is likely to enter it, and if the vessel's speed and/or course cannot be changed to avoid the animal(s) entering the EZ, the airguns will be powered down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered down immediately. During a power down of the airgun array, the 40–in^3 airgun will be operated. If a marine mammal is detected within or near the smaller safety radii around that single airgun (see Table 1 above), all airguns will be shutdown (see next subsection).

Following a power down, airgun activity will not resume until the marine mammal is outside the safety radius for the full array. The animal will be considered to have cleared the safety radius if it:

(1) Is visually observed to have left the safety radius; or

(2) Has not been seen within the safety radius for 15 minutes in the case of small odontocetes or pinnipeds; or

(3) Has not been seen within the safety radius for 30 minutes in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales; or

During airgun operations following a power-down (or shut-down) and subsequent animal departure as above, the airgun array will resume operations following ramp-up procedures described below.

Shutdown Procedures - The operating airgun(s) will be shut down if a marine mammal is detected within or approaching the safety radius for the then-operating single 40 in^3 airgun while the airgun array is at full volume or during a power down. Airgun activity will not resume until the marine mammal has cleared the safety radius or until the MMO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the safety radius will be as described in the preceding subsection.

Ramp-up Procedures - A ramp-up procedure will be followed when the airgun array begins operating after more than nine minutes without airgun operations or when a power-down has exceeded nine minutes. This period is based on the modeled 180–dB radius for the 36–airgun array (see Table 1) in relation to the planned speed of the *Langseth* while shooting. Similar periods (approximately eight to 10 minutes) were used during previous L-DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 20 to 25 minutes. During ramp-up, the MMVOs will monitor the safety radius, and if marine mammals are sighted, a course/speed change, power down, or shutdown will be implemented as though the full array were operational.

If the complete safety radius has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, ramp-up will not commence unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped up from a complete shut down at night or in thick fog, because the other part of the safety radius for that array will not be visible during those conditions. If one airgun has operated during a power down period, ramp up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and have the opportunity to move away. Ramp up of the airguns will not be initiated if a marine mammal is sighted within or near the applicable safety radius during the day or close to the vessel at night.

MMVO Data and Documentation

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions or lack thereof. Data will be used to estimate the numbers of mammals potentially ''taken'' by harassment. They will also provide information needed to order a power-down or shutdown of airguns when marine mammals are within or near the relevant safety radius. When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc. and including responses to ramp-up), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state or ramp-up, power-down, or full power), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All observations, as well as information regarding airgun power down and shutdown, will be recorded in a standardized format. Data will be entered into a custom electronic database. The accuracy of data will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. Preliminary reports will be prepared during the field program and summaries forwarded to the operating institution's shore facility and to NSF weekly or more frequently. MMO observations will provide the following information:

(1) The basis for decisions about powering down or shutting down airgun arrays.

(2) Information needed to estimate the number of marine mammals potentially ''taken by harassment.'' These data will be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A draft report will be submitted to NMFS within 90 days after expiration of the IHA. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring and mitigation. The 90–day draft report will summarize the dates and locations of seismic operations (dates, times, locations, heading, speed, weather, sea state, activities), and all marine mammal sightings (dates, times, locations, species, behavior, number of animals, associated seismic survey activities).

The report will also include the estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways, as well as a description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and Biological Opinion's (BiOp) Incidental Take Statement. L-DEO is then required to submit a final report within 30 days after receiving comments from NMFS on the draft report.

Endangered Species Act (ESA)

Pursuant to section 7 of the ESA, NSF has consulted with the NMFS, Office of Protected Resources, Endangered Species Division on this seismic survey. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division has also consulted internally pursuant to section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. On August 18, 2009, NMFS issued a BiOp and concluded that the issuance of an IHA is not likely to jeopardize the continued existence of blue, fin, sei, humpback, and sperm whales, leatherback sea turtles, as well as listed salmonids. The BiOp also concluded that the proposed activities would have no effect on critical habitat, as the Canadian government has no such designation within the action area. Finally, NMFS has incorporated the Relevant Terms and Conditions of the Incidental Take Statement in the BiOp into the IHA.

National Environmental Policy Act (NEPA)

On September 22, 2005 (70 FR 55630), NSF published a notice of intent to prepare a Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OES) to evaluate the potential environmental impacts associated with the use of seismic sources in support of

NSF-funded research by U.S. academic scientists. NMFS agreed to be a cooperating agency in the preparation of the EIS/OEIS. This EIS/OEIS has not been completed.

Therefore, in order to meet NSF's and NMFS' NEPA requirements for the proposed activity and issuance of an IHA to L-DEO, the NSF has prepared an EA that is specific to the marine geophysical survey conducted by the R/V *Marcus G. Langseth* in the northeast Pacific Ocean. NSF's EA, titled, Marine Seismic Survey in the Northeast Pacific Ocean, August/September, 2009 is based, in part, on an environmental assessment report (hereinafter, Report), prepared by LGL Limited environmental research associates (LGL) on behalf of NSF, titled, ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the Northeast Pacific Ocean, August September, 2009.'' The EA, and Report, specifically analyze the fact that L-DEO intends to obtain an IHA from NMFS in order to conduct the seismic survey. The EA evaluates the impacts of potential incidental Level B harassment resulting from the specified activity in the specified geographic region. The NSF has made a Finding of No Significant Impact (FONSI) determination based on information contained within its EA and Report, that implementation of the proposed action is not a major Federal action having significant effects on the environment within the meaning of NEPA. NSF determined, therefore, that an environmental impact statement would not be prepared.

On May 8, 2009 (74 FR 2163), NMFS noted that the NSF had prepared an EA for the northeast Pacific Ocean surveys and made this EA, and the Report, available upon request. NMFS has independently reviewed the information contained in NSF's EA and determined that the NSF EA describes the proposed action alternative and evaluates and discloses the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS has adopted the NSF EA, and incorporated Report, under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also takes into consideration additional mitigation measures required by the IHA that are not in NSF's EA or Report. Therefore, NMFS has determined that it is not necessary to issue a new EA, supplemental EA or an EIS for the issuance of an IHA to L-DEO for this activity. A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Determinations

NMFS has determined that the impact of conducting the seismic survey in the northeast Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of 33 species of cetaceans. Though NMFS believes that take of the requested numbers is unlikely, we still find these numbers small relative to the population sizes. Further, this activity is not expected to adversely affect any species or stock through affects on annual recruitment or survival. Therefore, NMFS has determined that the activity will have a negligible impact on the affected species or stocks.

The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses is not implicated for this proposed action. There is no subsistence harvest of marine mammals in the proposed research area; therefore, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses.

The negligible impact determination is supported by: (1) the likelihood that, given sufficient warning through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to it becoming potentially injurious; (2) the fact that marine mammals would have to be closer than 40 m (131 ft) in deep water, when a single airgun is in use from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (3) the fact that marine mammals would have to be closer than 950 m (0.5 nm) in deep water, when the full array is in use at a 9–15 m (29.5–49.2 ft) tow depth from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (4) the likelihood that marine mammal detection ability by trained observers is good at those distances from the vessel; (5) the use of PAM, which is effective out to tens of km, will assist in the detection of vocalizing marine mammals at greater distances from the vessel; (6) the incorporation of other required mitigation measures (i.e., ramp-up, power-down, and shutdown); and (7) the limited duration of the seismic survey in the study area (approximately 39 days). As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the required monitoring and mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, relative to the affected species and stock sizes, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

Authorization

As a result of these determinations, NMFS has issued an IHA to L-DEO for conducting a marine geophysical survey in the northeast Pacific Ocean in August October, 2009, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 19, 2009.

James H. Lecky,

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

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing