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**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 parts 222-226).

Dr. Douglas Peterson is seeking a five-year scientific research permit to conduct a study in the Altamaha River, Georgia, assessing the distribution, abundance and movements of adult and sub-adult of shortnose sturgeon. The permit would authorize non-lethal sampling methods on up to 500 shortnose sturgeon annually, but not to exceed 1,500 over the life of the permit. Research activities would include gill netting, measuring (length, weight, photos), genetic/fin-ray tissue sampling, PIT and sonic tagging, anesthesia, laparoscopy, and gastric lavage. To document spawning in the river, up to 20 eggs or larvae would be lethally collected with artificial substrates annually. Additionally, one incidence of unintentional mortality or serious injury is proposed over the life of the permit.

Dated: June 18, 2009

**P. Michael Payne,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XP64**

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

**AGENCY:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a one-year Letter of Authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally take, by Level B harassment only, California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to professional fireworks displays within the MBNMS.

**DATES:** This authorization is effective from July 4, 2009, through July 3, 2010.

**ADDRESSES:** The LOA and supporting documentation are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by contacting one of the individuals listed here (**FOR FURTHER INFORMATION CONTACT**), or online 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 and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, Office of Protected Resources, NMFS, (301) 713-2289, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980-4023.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) upon request, to allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of marine mammals 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 regulations are issued.

The Secretary shall grant the authorization for incidental taking if NMFS finds, after notice and opportunity for public comment, that the total of such taking during each five-year (or less) period concerned, will have a negligible impact on the species or stock(s), 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 takings are set forth.

NMFS has defined "negligible impact" in 50 Code of Federal

Regulations 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and Pacific harbor seals, by Level B harassment, incidental to commercial fireworks displays within the Monterey Bay National Marine Sanctuary (MBNMS) became effective on July 4, 2006, and remain in effect until July 3, 2011. For detailed information on this action, please refer to the original **Federal Register** notice (71 FR 40928, July 19, 2006). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries. This will be the third LOA issued pursuant to these regulations.

#### Summary of Request

On February 11, 2008, NMFS received a request for a LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals incidental to fireworks displays at the MBNMS. Justification for conducting fireworks displays within the MBNMS can be found in the proposed rule (71 FR 25544, May 1, 2006) and the final rule (71 FR 40928, July 19, 2006).

#### Summary of Activity and Monitoring Under the Current LOA

In compliance with the 2008 LOA, the MBNMS submitted an annual report on the fireworks displays at MBNMS. A summary of that report follows.

For each display, observers conducted pre-event surveys to document abundance and distribution of local marine mammal populations within the fireworks areas. Following the fireworks display, observers conducted post-event monitoring to record the presence of injured or dead marine mammals, and other wildlife.

Pre-event monitoring of the Cambria Independence Day Fireworks on July 3 found no marine mammals present at the site and a post-event census on July

5 found no injured or dead marine mammals.

An observer from the Moss Landing Marine Laboratory conducted a pre-event survey on July 3 for the City of Monterey's Independence Day Fireworks and enumerated 394 California sea lions, two sea otters (*Enhydra lutris*), and 10 harbor seals. Post-event monitoring on July 5 revealed no injured or dead marine mammals.

Observers monitored the Pillar Point Harbor area for the Half Moon Bay Independence Day Fireworks on July 3 and recorded two harbor seals. Post-event monitoring on July 5 revealed no injured or dead marine mammals.

The Pacific Grove Feast of Lanterns Fireworks display consisted of enumerating all marine mammals within 400 meters of the fireworks launch site (survey area). On July 25, observers reported the presence of two sea otters within the survey area and more than 200 harbor seals outside of the survey area. A post-event monitoring survey found no injured or dead animals.

Finally, pre-event monitoring of the Monte Foundation Fireworks Display on October 10 found two harbor seals and one to two dozen California sea lions 500 yards offshore the Seacliff Beach area. On October 12, the observers reported that there were no injured or dead marine mammals.

In summary, the total number of potentially harassed California sea lions (406) and harbor seals (14) for all fireworks displays, was well below the authorized limits as stated in the final rule (71 FR 40928, July 19, 2006).

No dead or injured marine mammals were reported for any of the events. Hence, these monitoring results support NMFS' initial findings that fireworks display will result in no more than Level B behavioral harassment of small numbers of California sea lions and harbor seals and that the effects will be limited to short term behavioral changes, including temporary abandonment of haul-out areas to avoid the sights and sounds of commercial fireworks.

#### Authorization

NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to the coastal commercial fireworks display within the Sanctuary. Issuance of this LOA is based on the results of the MBNMS 2008 monitoring report which verify that the total number of potentially harassed sea lions and harbor seals was well below the authorized limits as stated in the final

rule (71 FR 40928, July 19, 2006). Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses. No mortality or injury of affected species is anticipated.

Dated: June, 19, 2009

**James H. Lecky,**

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

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### **Intent To Prepare an Environmental Impact Statement on an Application for a Department of the Army Permit Under Section 404 of the Clean Water Act by The Sabine Mining Company for the Construction, Operation, and Reclamation of the South Hallsville No. 1 Lignite Mine—Rusk Permit Area, Rusk, Panola, and Harrison Counties, TX**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, Fort Worth District (USACE) has received an application for a Department of the Army permit under Section 404 of the Clean Water Act (CWA) from The Sabine Mining Company (SMC) to construct, operate, and reclaim the South Hallsville No. 1 Lignite Mine—Rusk Permit Area. In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the USACE has determined that issuance of such a permit may have a significant impact on the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement (EIS).

The USACE intends to prepare an EIS to assess the environmental, social, and economic effects of issuance of a Department of the Army permit under Section 404 of the CWA for discharges of dredged and fill material into waters of the United States (U.S.) associated with the construction of the proposed surface lignite mine. In the EIS, the USACE will assess potential impacts associated with a range of alternatives.

**DATES:** A public scoping meeting will be held on Tuesday, July 7, 2009, from 5 p.m. to 8 p.m. The purpose of this meeting is to disseminate information about the proposed project and its potential effects to the human environment, and to seek public comments on the scope of the proposed project.

**ADDRESSES:** The public scoping meeting will be held at the Tatum Middle School, 410 North Hill, Tatum, Texas.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or questions about the proposed action and EIS, please contact Ms. Jennifer R. Walker, Regulatory Permits Section Chief, by letter at Regulatory Branch, CESWF—PER—R, U.S. Army Corps of Engineers, P.O. Box 17300, Fort Worth, TX 76102—0300 or by telephone at (817) 886—1863.

#### **SUPPLEMENTARY INFORMATION:**

1. *Description of the Proposed Project:* The proposed South Hallsville No. 1 Lignite Mine—Rusk Permit Area would be located approximately 1 mile north of the City of Tatum, Rusk County, Texas. The approximately 20,377-acre mine site would recover approximately 130 million tons of lignite during the 30-year life of the mine, for sole use at the existing H.W. Pirkey Power Plant, which is owned and operated by American Electric Power (AEP). Overall, the proposed project would result in adverse impacts to approximately 300 acres of waters of the U.S., including approximately 186 acres of wetlands, 65 acres of ponds, and approximately 349,320 linear feet of streams, including a navigable reach of the Sabine River. Adverse impacts would occur in conjunction with the removal and stockpiling of overburden and interburden in an effort to recover approximately 90% of the in-place tonnage. As part of this project, several public roads, approximately 400 gas wells, and approximately 350 miles of pipeline would require modification. Other potential adverse effects associated with this project would include loss of forested floodplain and upland habitats, impacts to archeological sites, relocation of residential dwellings and one cemetery, and cumulative effects associated with the operation of four surface lignite mines within an approximately 20-mile radius.

2. *Alternatives:* Alternatives available to the USACE are to: (1) Issue the Department of the Army permit; (2) issue the Department of the Army permit with special conditions; or (3) deny the Department of the Army permit. Alternatives available to SMC include: (1) Construct, operate, and