

winter of 2002 established that seals routinely hauled out on the adjacent rocks during ongoing activities within the harbor. On several occasions, these seals flushed, apparently due to activities on the dock or in the harbor. However, when they did leave the rocks during low tide they would quickly return or be replaced by other individuals in the same resting place. This quick return to the original haulout suggests that the response was short term and transient. Boeing's experience last year with the dredging and other harbor activities, however, also demonstrated that stopping work when seals are present on the adjacent rocks can have a considerable impact to schedules and costs. The data collected during last year's harbor activities, which is documented in the application for the IHA, supports the conclusion reached by NMFS in the proposed IHA that the occasional flushing of a limited number of seals from the rocks while harbor activities are underway has minimal impact on the species. Accordingly, Boeing requests that the IHA provide that the continuation of activities at VAFB harbor is authorized while seals are present even in the event of flushing seals.

NMFS concurs that continuation of activities would have a minimal impact on pinnipeds and has thus modified the mitigation measures contained in the authorization to allow for continuation of activities while seals are present. The mitigation measures still require marine mammal monitoring during all Boeing activities in the harbor and reporting of any possible disturbance of the harbor seals associated with those activities.

Mitigation

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities Boeing will undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling harbor seals at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while harbor seals are present.

(4) If activities cease for longer than 30 minutes and harbor seals are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any

flushing or other behaviors as a result of Boeing's activities.

(6) The Delta Mariner and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks and the vessel will reduce speed 1.5 to 2 knots once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and its mooring dolphins at less than 0.75 knot.

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

Monitoring

As part of its application, Boeing provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed.

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

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

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

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

Reporting

Boeing will notify NMFS 2 weeks prior to initiation of each activity. After each activity is completed, Boeing will provide a report to NMFS 120 days prior to the expiration of this Authorization or within 120 days after the expiration of this Authorization if a new Authorization is not being requested. This report will provide dates and locations of specific activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In addition, the report will include information on the weather, the tidal state, the horizontal visibility, and the composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these

activities, this will be reported to NMFS immediately.

Consultation

This action will not affect those marine mammal species listed under the Endangered Species Act (ESA), that are under the jurisdiction of NMFS, as these species are not expected to haulout on VAFB and thereby potentially be affected through harassment and fleeing from the haulout. No other marine species listed under the ESA will be affected by Boeing's harbor activities related to the Delta IV/EELV at VAFB. VAFB formally consulted with U.S. Fish and Wildlife Service (FWS) in 1998 on the possible take of southern sea otters during Boeing's harbor activities at south VAFB. A Biological Opinion was issued in August 2001. Southern sea otters were discussed in these documents and FWS recognized that Boeing will restore sea otter habitat (i.e., kelp beds) in the vicinity of the harbor to replace kelp destroyed during dredging. In addition, the FWS noting that VAFB has committed to a southern sea otter monitoring program designed to detect the presence and possible disturbance at the VAFB harbor area during dredging activities.

NEPA

In accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has determined, based on the content and analysis of Boeing's request for an IHA, and the Final EA for Harbor Activities Associated with the Delta IV Program at VAFB (ENSRI, 2001) that the proposed issuance of this IHA to Boeing by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Impacts are not expected to be outside the scope of that EA. Therefore, this action meets the definition of a "Categorical Exclusion" and is exempted from further environmental review.

Determinations

NMFS had determined that the impact of harbor activities related to the Delta IV/EELV at VAFB, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation will result in the harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; would have no more negligible impact on these marine mammal stocks; and would not have an