

surfacing from its previous dive if it is within a mile or two of the vessel.

*Comment 3:* The Commission notes that it is unclear whether vessel-based passive acoustic monitoring will be conducted as an adjunct to visual monitoring during daytime and particularly during nighttime operations to detect, locate, and identify marine mammals, and, if not, why not.

*Response:* Passive acoustical monitoring equipment similar to that onboard the *R/V Maurice Ewing* during the 2003 Gulf of Mexico (GOM) Sperm Whale Seismic Study (SWSS), is not the property of SIO or the *Revelle*, and therefore is not available for the ETP cruise. In addition, the expense and logistics involved in operating passive acoustical monitoring as a mitigation measure (requiring triangulation on the vocalization), the fact that the zone where Level A harassment could occur is small (738 ft, 225 m), and no nighttime acoustics are planned during this cruise, indicate that use of passive acoustical monitoring is neither warranted nor practical. The Lamont-Doherty Earth Observatory (LDEO) is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises using large airgun arrays. NMFS expects a report on this analysis shortly.

*Comment 4:* With respect to pinnipeds, the CBD states that NMFS neglects to state the number that the SIO project will take. Instead, the proposed authorization notes that SIO "did not estimate numbers of pinnipeds potentially vulnerable to harassment due to insufficient data on distribution, abundance, and pinniped response," and nonetheless concludes that the *Revelle* is unlikely to encounter significant numbers of pinnipeds (68 FR 51242). Practical considerations or unavailability of information is no excuse for failing to make the required MMPA findings. The proper course of action in the absence of sufficient data to make the required MMPA findings and ensure compliance with the MMPA is to deny authorization of the project.

*Response:* The application contains references of known studies on pinniped abundances in the ETP. Insufficient data on distribution, abundance, and pinniped response makes it impossible to estimate an actual number of pinnipeds potentially vulnerable to harassment. However, based on data from these studies, general information exists on locations and seasons in which these pinniped species have been observed in the past. Because of these estimated species

ranges and the near-shore nature of many species of pinnipeds, very few, if any, pinnipeds are expected to be encountered along the well-offshore seismic lines proposed by Scripps. Mitigation measures, the downwards directional nature of the low-volume airguns, the brevity of seismic profiling in certain habitats, and the fact that many pinnipeds have been shown to be highly tolerant of high levels of airgun noise, make it even less likely that any pinnipeds encountered will experience harassment.

*Comment 5:* With respect to cetaceans, the proposed authorization does not provide actual numbers taken, but rather states that the total estimated take by harassment will be less than 1 percent of most cetaceans (including the endangered sperm and blue whales), 1.8 percent of pygmy sperm whales, 6.2 percent of dwarf sperm whales, and 1.8 percent of the endangered humpback whales in the area (68 FR 51243). By dismissing the number of cetaceans affected by the proposed activity with this reasoning, NMFS has improperly conflated its two, distinct statutory obligations to only authorize take of (1) of small numbers; and (2) with no more than a negligible impact.

*Response:* The SIO application, available by request (see **ADDRESSES**), contains both numbers and percentages of estimated takes. Based on the analysis found in this document and in SIO's application, which NMFS believes is based on the best scientific information available, the notice of proposed authorization (68 FR 51240) used percentages to show that even in cases where the absolute numbers may not seem "small", they are small relative to the size of the affected species or stocks. As the SIO application indicates, the absolute numbers of takes by species ranges from 1 animal to 21,450.

*Comment 6:* While the proposed authorization does outline several monitoring, mitigation, and reporting measures, these measures do not insure the "least practicable adverse impact" as required by the MMPA. In addition, NMFS provides no explanation for why seismic profiling cannot be limited to daylight hours when observers are on surveillance duty and marine mammals are far more detectable. Furthermore, under the proposed authorization's shut-down procedures, it is unclear why NMFS only addressed measures necessary to avoid Level A and not Level B harassment when both are prohibited by the MMPA. Also, NMFS failed to mention or require any exclusion zones to avoid seismic operations in coastal areas and key

habitat for feeding, mating, breeding and migration.

*Response:* NMFS is requiring SIO to incorporate the mitigation measures that are standard for significantly larger seismic arrays. SIO may need to continue its operations into night-time hours. Limiting activities to daylight hours only would require the *Roger Revelle* to return to the site during daylight, approach the area for which data is lacking, and begin seismic activities once again. Since this area could not be located exactly, additional seismic operations would need to be conducted. This would result in additional noise in the environment and is not cost-effective (ship operations are approximately \$35,000/day). Therefore, the IHA authorizes Scripps to continue seismic into night-time hours. However, if the array is shut-down at night, seismic operations may not begin again until daylight allows the safety zone to be observed for the time period noted in this document.

For similar reasons, shutting down seismic operations to protect marine mammals from Level B disturbance, if protracted, would also require the *Roger Revelle* to return to the site again to re-shoot the seismic lines. It should be understood that ramp-up and the ship's forward speed both allow marine mammals to be exposed to sounds at low levels and thereby move out of the area of annoyance, further limiting Level B harassment. For those reasons, NMFS prefers to limit the amount of noise projected into the water and believes that this suggested mitigation measures are not practicable.

*Comment 7:* The CBD believes that NMFS determining that a Categorical Exclusion is not appropriate for this action and that use of another Environmental Assessment (EA) for this action is not sufficient.

*Response:* NMFS followed NOAA Administrative Order (NAO) 216-6 before making a determination that this action qualifies for a Categorical Exclusion. As noted in the proposed authorization notice and this document, an Environmental Assessment (EA) on a similar (i.e., oceanographic research) seismic survey action for this area of the Pacific Ocean was prepared and released to the public on July 11, 2003 (68 FR 41314) for a 30-day public comment period. The seismic airgun array used in that survey and addressed in the EA was for an array of up to 12-airguns with a total volume of 3,721 in<sup>3</sup>. No comments were received during that period on the subject EA, and NMFS' analysis of that action resulted in a Finding of No Significant Impact (FONSI)(see 68 FR 41314, July