CALENDAR ITEM
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A) 12/17/09
) Statewide PRC 8391
S) R. B. Greenwood

CONSIDER REVOCATION OF A NON-EXCLUSIVE GEOPHYSICAL SURVEY PERMIT ON TIDE AND SUBMERGED LANDS UNDER THE JURISDICTION OF THE CALIFORNIA STATE LANDS COMMISSION

PERMIT HOLDER:

Fugro Pelagos, Inc.
Attn.: Mr. David Millar
3738 Ruffin Road
San Diego, CA 92123-1812

BACKGROUND:

Fugro Pelagos, Inc. currently holds a low energy statewide Offshore Geophysical Permit. These permits are issued to qualified companies to perform geophysical surveys of the ocean bottom for the purpose of geotechnical investigation of nearshore sand erosion and deposition studies, optic cable routes, oil and gas pipeline routes, marine facility sea bottom changes, seafloor hazards and debris, and location of sunken boats and airplanes. These low energy surveys utilize equipment such as side scan sonar and magnetometer, which use no more than two kilojoules of energy. Air guns and other sources of high energy are expressly prohibited in the permit. Upon request, the California State Lands Commission (CSLC) will receive copies of all data derived from any and all surveys under the permit.

Fugro Pelagos, Inc. has violated provisions of its Offshore Geophysical Survey Permit (PRC 8391) by conducting geophysical surveys without a National Oceanic and Atmospheric Administration (NOAA) approved Marine Wildlife Monitor onboard (per paragraph 6D of Permit 8391). A NOAA special agent contacted the CSLC staff on November 9, 2009, regarding a blue whale that was fatally injured on October 19, 2009. NOAA reported the incident as having occurred in State waters approximately 1-½ miles offshore during a multi beam sonar hydrographic survey that was being conducted by Fugro Pelagos, Inc., under a contract with NOAA.

Further, Fugro Pelagos, Inc. was also in violation of Permit PRC 8391 by conducting a geophysical survey in State waters without prior notification to the agency, as required in Exhibit C of the permit.

OTHER PERTINENT INFORMATION

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

STATUTORY AND OTHER REFERENCES:

A. Public Resources Code section 6826
B. Public Resources Code section 21080(c)
C. Title 2, California Code of Regulations, section 2100
D. Title 14,California Code of Regulations, section 15074

EXHIBIT:

A. Permit Regions

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

2. AUTHORIZE REVOCATION OF THE FUGRO PELAGOS, INC. NON-EXCLUSIVE GENERAL PERMIT TO CONDUCT LOW ENERGY GEOPHYSICAL SURVEYS ON TIDE AND SUBMERGED LANDS OF THE STATE OF CALIFORNIA.

3. AUTHORIZE BILLING STAFF EXPENSES FOR INCIDENT RESPONSE

AND PERMIT REVOCATION TO RESIDUAL PERMIT APPLICATION FUNDS AND TO SECURITY BOND 215715 ISSUED BY AMERICAN CONTRACTORS INDEMNITY COMPANY IN FAVOR OF STATE OF CALIFORNIA, STATE LANDS COMMISSION ON BEHALF OF FUGRO PELAGOS, INC.

4. AUTHORIZE STAFF TO RESTORE THE REVOKED PERMIT TO FUGRO PELAGOS, INC. AFTER JANUARY 17, 2010, IF, PRIOR TO THAT RESTORATION, STAFF IS STAISFIED THAT FUGRO PELAGOS, INC. HAS AGREED IN WRITING THAT:

   A. OCEAN FLOOR SURFACE MAPPING USING MULTIBEAM SONAR EQUIPMENT IS AN ACTIVITY THAT IS COVERED BY THE ISSUED PERMIT; AND

   B. FUGRO PELAGOS, INC. WILL COMPLY WITH ALL PROVISIONS OF THE PERMIT, INCLUDING, BUT NOT LIMITED TO PROVISIONS RELATING TO NOTICES AND TO THE PRESENCE OF A MARINE WILDLIFE MONITOR DURING SURVEY OPERATIONS.

5. STAFF IS FURTHER AUTHORIZED TO TAKE WHATEVER LEGAL ACTION IS NECESSARY AND APPROPRIATE TO PRECLUDE FUGROS PELAGOS, INC. FROM ENGAGING IN GEOPHYSICAL SURVEY OPERATIONS WITHOUT A PERMIT AND TO ENFORCE THE PROVISIONS OF THE PERMIT TO FUGRO PELAGOS, INC. IN THE EVENT THAT IT IS RESTORED.
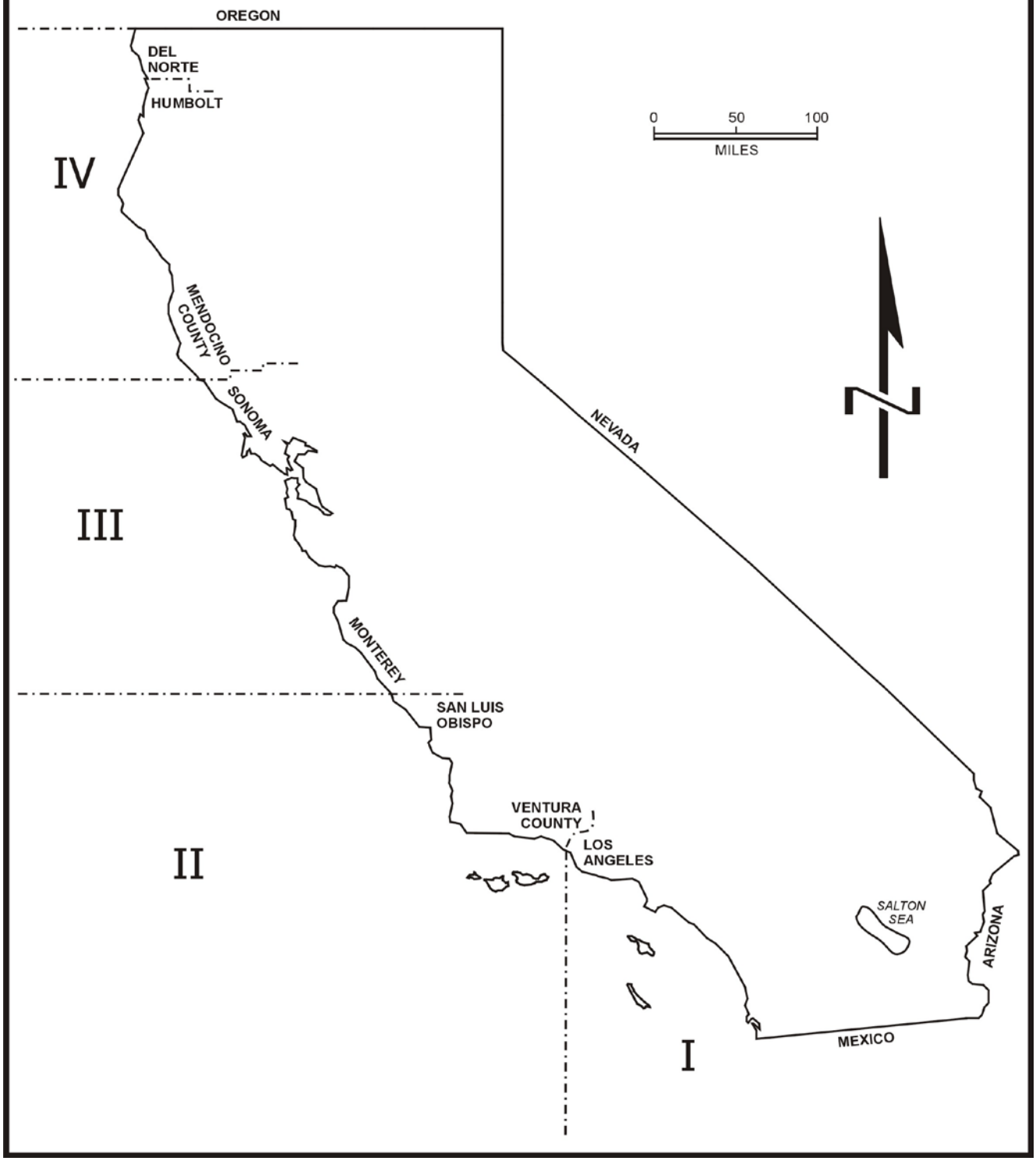
EXHIBIT A
PERMIT REGIONS