

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 102198A]

**Small Takes of Marine Mammals Incidental to Specified Activities**

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the Washington State Department of Corrections (WDOC) to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition and construction of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound for a period of 1 year.

**DATES:** This authorization is effective from January 1, 1999, through December 31, 1999.

**ADDRESSES:** The application, authorization, and a 1994 environmental assessment (EA) are available by writing to the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or the Northwest Region, NMFS, Bldg 1, 7600 Sand Point Way, Seattle, WA 98115, or by telephoning one of the contacts listed here.

The Washington State Final Environmental Impact Statement (FEIS) and other documents are available for review during regular business hours at these same offices.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, or Brent Norberg, Northwest Regional Office, NMFS, (206) 526-6733.

**SUPPLEMENTARY INFORMATION:****Background**

Subsections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed

authorization is provided to the public for review.

Permission may 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 and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. 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."

Subsection 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. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) 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.

Subsection 101(a)(5)(D) 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. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Background of Request**

On September 18, 1998, NMFS received an application from the WDOC requesting an authorization for the possible harassment of small numbers of harbor seals incidental to work involved in the removal and replacement of the Still Harbor Dock Facility (Dock Facility), a foul weather landing facility for the McNeil Island Corrections Center, McNeil Island, WA. (The Quitclaim Deed, which transferred the property from Federal to state control, limits the use of the Still Harbor Dock to emergency situations because of the Gertrude Island harbor seal population.) Significant deterioration of the existing facility, including the collapse on May 24, 1994, of the steel-pile-supported concrete center portion of the facility, has resulted in the need for major

renovation in order to maintain a safe, functional facility.

On January 23, 1995, NMFS issued an IHA to the WDOC under subsection 101(a)(5)(D) of the MMPA for this project (see 60 FR 7046, February 6, 1995). However, removal of the Dock Facility was not completed; the IHA expired 1 year after authorization; and a renewal was not requested since that time.

The renovation will include demolition of the existing facility; construction of a new pile-supported concrete access trestle approximately 350 ft (107 m) long by 10 ft (3.0 m) wide, a new 50 ft (15.2 m) long by 5 ft (1.5 m) wide aluminum gangway, seven new 10 ft (3.0 m) wide and 50 ft (15.2 m) long and one new 14 ft (4.3 m) wide and 60 ft (18.3 m) long concrete floats; and 60 steel pipe and prestressed concrete piles. All new structures will be constructed within the footprint of the existing facility. The new dock will be significantly smaller than planned in 1994 (8,000 ft<sup>2</sup> v. 20,000 ft<sup>2</sup>). Additional information on the dock facility and the Corrections Center in general can be obtained by referring to the FEIS published by the WDOC in 1989 in compliance with the State Environmental Policy Act of 1971 (chapter 43.21C, Revised Code of Washington). This document and the 1998 Addendum are available for viewing (see **ADDRESSES**).

In an effort to minimize noise from these activities, no explosives will be used for demolition. The dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals. The demolition and pile-driving activities are anticipated to be completed in one season's specified work window, from December 1998 or January 1999 through March 15 or April 1, 1999. Above-water work is scheduled to continue through to the end of August 1999.

**Comments and Responses**

A notice of receipt of the application and proposed authorization was published on October 29, 1998 (63 FR 58012), and a 30-day public comment period was provided on the application and proposed authorization. During the 30-day comment period, comments were received from the Marine Mammal Commission (MMC).

*Comment:* The MMC recommends, as it did in 1994, that the proposed incidental harassment authorization not be issued until the uncertainties and details of the monitoring program have been worked out and NMFS is able to

reasonably conclude that the monitoring program is appropriate to detect any possible harmful effects on the local harbor seal population.

**Response:** NMFS concurs that monitoring should be carried out (as required by the MMPA). NMFS believes that the level and extent of monitoring required for "harassment" takings must be weighed against the anticipated level of impact. For this type of activity, NMFS believes that observations prior to, during, and subsequent to any noise disturbance activities will provide sufficient information on the impact of disturbance. Also, since the Gertrude Island harbor seal haul-out is the largest in Puget Sound and has been studied by both Washington Department of Fish and Wildlife (WDFW) and NMFS, sufficient baseline data have already been recorded. To ensure that observations take place during demolition work, a condition of the IHA in 1994, and again this year, is for WDOC to notify both NMFS and the WDFW at least 48 hours prior to commencement of work in order to allow observations of harbor seals prior to work beginning. To ensure that observations take place during demolition work, if NMFS and/or WDFW biologists are not available during demolition, the WDOC is required to contract with trained marine mammal biologists for behavioral observations to be made during any work on the McNeil Island Dock. The IHA requires a report on these observations be provided within 90 days of completion of work.

### Harbor Seals

A description of the harbor seals found in Puget Sound and on Gertrude Island can be found in the notice of proposed authorization and need not be repeated here.

### Expected Impact to Harbor Seals

The impact to the harbor seals would be disturbance by noise, which is anticipated to result in a negligible short-term impact to a small number of harbor seals. When harbor seals are frightened by noise or by the approach of a boat, plane, human, or other potential predator, the seals will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haul-out site immediately, stay in the water for some length of time before hauling out, or haul out in a different area (Johnson, 1977; Skidmore and Babson, 1981). These short term disturbances and site reoccupation were confirmed by observations conducted during the first phase of the project

(WDOC, 1997). Disturbances tend to have a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season (Jones and Stokes, 1989).

Short-term impact of the activities is expected to result in a temporary reduction in utilization of the haulout while work is in progress or until the seals acclimate to the disturbance. The specific activities will not result in any reduction in the number of seals, and they are expected to continue to occupy the same area of Gertrude Island. The abandonment of Gertrude Island as a harbor seal haulout and rookery is not anticipated due to the existing level of human activity on and around the dock for over 50 years (Jones and Stokes, 1989). Human activity increases annually in the late fall and winter months when the use of the dock facility serving as a foul weather moorage for WDOC passenger ferries, barges, tugboats, and patrol boats increases.

In addition, the activities are anticipated to have no long-term impact on the habitat of harbor seals. No direct physical impact to the habitat will occur due to the dock reconstruction as all new facilities will occur within the footprint of the original structure. Mitigation measures (discussed here) under an MMPA IHA are expected to reduce any impacts to a negligible level.

### Mitigation

Efforts to ensure negligible impact of the dock renovation project on harbor seals identified by the WDOC include:

1. A December 1–July 15 (or whenever newborn pups are first observed on Gertrude Island) work schedule for those activities that are predicted to disturb harbor seals in order to avoid adversely affecting harbor seals during the pupping and nursing season (July 15 to October 15);
2. A 1,000–ft (305 m) no-entry buffer zone around Gertrude Island to minimize the impact of vessel traffic on harbor seals during the project (the buffer zone will be marked by floats);
3. Construction activities and seal behavior will be monitored by marine biologists to ensure that impacts on seals will be minimal;
4. The demolition will not utilize any explosives;
5. The removal of material and debris will be in the largest sizes possible, and the removed materials will be transported off site for disposal; and
6. To mitigate noise levels and, thereby, impacts to harbor seals, all construction equipment should comply as much as possible with applicable equipment noise standards of the U.S.

Environmental Protection Agency (EPA, 1974), and all construction equipment should have noise control devices (e.g., mufflers) no less effective than those provided on the original equipment.

### Monitoring

The Gertrude Island haulout has been the site of research projects on harbor seals for a number of years. Research efforts by NMFS and WDFW include a radio tag study to learn about feeding behavior of the seals. The IHA requires WDOC to notify NMFS, and the WDFW prior to work in order to coordinate this research.

While monitoring impacts from construction is planned to be conducted by WDFW, the WDOC may contract with a private contractor to monitor activities if WDFW biologists are unavailable.

### Conclusions

NMFS has determined that the short-term impact of taking small numbers of harbor seals by harassment incidental to the demolition and construction of the Dock Facility on McNeil Island is expected to result at worst in a temporary reduction in utilization of the impacted haulout(s) as seals leave the beach for the safety of the water. The activity is not expected to result in any reduction in the number of harbor seals, and these animals are expected to continue to occupy the same area. This behavioral change is expected to have no more than a negligible impact on the animals. Additionally, there will not be any impact on the habitat itself. Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of subsection 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

### Authorization

Accordingly, on the date of this notice, NMFS issued an incidental harassment authorization to the WDOC for 1 year for the demolition and reconstruction of the Dock Facility located on McNeil Island in the State of Washington, provided the above mentioned mitigation measures and reporting requirements are incorporated. NMFS has determined that the demolition of the Dock Facility would result in the harassment taking of only

a small number of harbor seals, would have a negligible impact on the harbor seal stock, and would not have an adverse impact on the availability of this stock for subsistence uses.

Dated: December 23, 1998.

**Michael Payne,**

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

[FR Doc. 98-34710 Filed 12-30-98; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 122398D]

#### Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold joint public meetings.

**DATES:** On Tuesday, January 19, 1999, the Mid-Atlantic Council and New England Council Scientific & Statistical Committees will meet from 10:00 a.m. until 4:00 p.m. On Wednesday, January 20, 1999, the Joint Spiny Dogfish Committee will meet from 10:00 a.m. until 5:00 p.m.

**ADDRESSES:** This meeting will be held at the Holiday Inn, 45 Industrial Highway, Essington, PA; telephone: 610-521-2400.

*Council address:* Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:** The purpose of these meetings is to review the overfishing definition for spiny dogfish and consider alternatives for spawning stock biomass rebuilding targets.

Although other issues not contained in this agenda may come before the Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 23, 1998.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 98-34564 Filed 12-30-98; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 122398C]

#### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling public meetings of its Herring and Groundfish Oversight Committees and Groundfish Advisory Panel in January, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will be held on January 21, January 25 and 26, 1999, respectively. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Peabody, MA and Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231-0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (781) 231-0422.

**SUPPLEMENTARY INFORMATION:**

### Meeting Dates and Agendas

*Thursday, January 21, 1999, 10 a.m.—Herring Oversight Committee Meeting*

Location: Holiday Inn, One Newbury Street (Route 1), Peabody, MA 01960; telephone: (978) 535-4600.

Consideration of Atlantic herring management issues including “grandfathering” provisions for large fishing vessels (over 165 feet), and, for the Gulf of Maine, a Total Allowable Catch “set-aside” for small otter trawl vessels and spawning closure boundaries.

*Tuesday, January 25, 1999, 9:30 a.m.—Groundfish Advisory Panel Meeting*

Location: Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; telephone: (603) 431-8000.

Review of the draft final document for the annual plan adjustment (Framework Adjustment 27) to the Northeast Multispecies Fishery Management Plan (FMP) and development of advice to the Groundfish Committee on a preferred alternative for consideration by the Council. The panel also will discuss and advise the Groundfish Committee on priorities for 1999. Topics will include, but may not be limited to action to address rebuilding programs as needed under the new overfishing definitions for all multispecies stocks, implementation of a two-tiered permit system to address latent fishing effort, industry proposals for scientific research and conservation engineering programs, and modification of the annual plan adjustment schedule and a possible change to the fishing year.

*Tuesday, January 26, 1999, 9:30 a.m.—Groundfish Oversight Committee Meeting*

Location: Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; telephone: (603) 431-8000.

Review of the draft final document for the 1999 annual plan adjustment (Framework Adjustment 27) to the Northeast Multispecies FMP and development of a preferred alternative for consideration by the Council. The Groundfish Committee also will discuss and recommend priorities for 1999. Issues or topics will include, but may not be limited to action to address rebuilding programs as needed under new overfishing definitions for all multispecies stocks, implementation of a two-tiered permit system to address latent fishing effort, industry proposals for scientific research and conservation engineering programs, and modification of the annual adjustment schedule and possible change to the fishing year.