

maximum of 300 harbor seals and 3,050 elephant seals will be captured or handled per year over a five year period, and an estimated 300 elephant seals, 5,150 harbor seals, 600 California sea lions, and five northern fur seals will be incidentally disturbed during pinniped research operations.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 31, 2006.

**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

[I.D. 100406A]

#### Taking of Marine Mammals Incidental to Specified Activities; Harbor Redevelopment Project, Moss Landing Harbor, California

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

**ACTION:** Notice; issuance of an incidental take 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 Moss Landing Harbor District (MLHD), to take small numbers of Pacific harbor seals and California sea lions, by harassment, incidental to the harbor redevelopment project in Moss Landing Harbor, California.

**DATES:** This authorization is effective from November 1, 2006 until October 31, 2007.

**ADDRESSES:** A copy of the application, IHA, and supporting documents for this action may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, NMFS, (301) 713-2289, ext

137, or Monica DeAngelis, NMFS, (562) 980-3232.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers 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.

An authorization shall be granted if NMFS finds that the taking will be small, 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 that 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 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."

Section 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. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) 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 [Level B harassment].

Section 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 marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

##### Summary of Request

On April 24, 2006, NMFS received a request from the Terrestrial and Aquatic

Biological Resources, on behalf of MLHD, to take small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to the North Harbor Redevelopment Project in Moss Landing Harbor, Monterey County, California.

The project includes construction of a 100-ft (30.5-m) long by 90-ft (27.4-m) wide boat ramp, a 5,000-square foot (464.5-m<sup>2</sup>) public wharf with pedestrian promenade and seating areas, and installation of a 171-ft long (52.1-m) by 10-ft (3.1-m) wide floating dock. The total proposed project site is 4.5 acres (18,211.5 m<sup>2</sup>). The construction phase of the redevelopment would involve driving a total of 72 piles: 9 for the boat ramp, 53 for the public wharf and promenade, and 10 for the floating dock. Installation of the pilings would most likely be from a land-based driver, however, a barge may be used for installation. The pilings will be concrete, 16-inch square for the wharf and the boat launch ramp boarding floats, and 20-inch square for the dock.

An impact hammer is required for installation of the piles. The energy output levels of the impact hammer are approximately 48 – 94 kilojoules (kJ) (or 35,381 – 69,458 foot-pound force (ft-lbs)), depending on the setting. The hammer would be operating at the rate of 36 – 52 blows per minute. The underwater noise level is measured at approximately between 165 – 175 dB re 1 microPa rms at 10 m (32.8 ft), and 155 – 170 dB re 1 microPa rms at 20 m (65.6 ft). It takes approximately 5 – 20 minutes drive time to install each pile, depending on the substrate encountered. Therefore, the maximum time required to install all piles would be 24 hours. The pile driving is estimated to be completed within 2 – 3 months. The proposed project would start in fall 2006.

##### Comments and Responses

A notice of receipt and request for 30-day public comment on the application and the proposed authorization was published in the Federal Register on September 8, 2006 (71 FR 53086). No comments were received during the 30-day public comment period. NMFS requested the review of the Marine Mammal Commission (the Commission) for the IHA application and proposed authorization. The Commission concurred with NMFS' determination that the proposed activities are unlikely to have a significant impact on the affected marine mammal populations.

### Description of the Marine Mammals Potentially Affected by the Activity

The affected species of marine mammals that may occur near the proposed project site are Pacific harbor seals and California sea lions. General information on these marine mammal species can be found in Caretta *et al.* (2006), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf>. None of the marine mammals species found in the proposed project areas is listed under the Endangered Species Act (ESA) or designated as depleted under the MMPA. Additional information on the abundance and occurrence of these species within or close to the proposed project area is presented below.

#### Pacific harbor seal

Pacific harbor seals are mainly seen on the sand bar at the North area of the harbor (North Harbor), which is about 575 ft (175.3 m) west from the proposed project area, across a Federal navigation channel. They are also seen along the boat dock area, and swimming to and from the ocean. The North Harbor sand bar is not a typical Pacific harbor seal pupping area. The closest known seal pupping area is over 0.5 mile (0.8 km) east of the proposed project area at Seal Bend in Elkhorn Slough (NMFS, 2004).

The number of Pacific harbor seals varies seasonally and with the time of day. They are most abundant during the day with approximately 20 - 100 individuals at the North Harbor sand bar, but leave the sand bar in the evening to feed in Monterey Bay. The number of seals are most abundant during the pupping and molting season from May to August.

#### California sea lion

California sea lions have been seen on the North Harbor docks, but their occurrence within the proposed project area is rare. Usually there are fewer than 2 individuals in the vicinity of Moss Landing Harbor (L. McIntyre, MLHD, 2006). Most of the sea lions in the Monterey Bay area are males of varying age classes that arrive in early fall from their southern breeding ground (Monterey Bay Aquarium, 1999). Many individuals remain over the course of the winter until the following spring, with just a few sea lions staying through the summer. There are no breeding areas for the California sea lion located in the Monterey Bay area, and most individuals migrate to offshore breeding sites in southern California and Mexico (NMFS, 2004).

### Potential Effects on Marine Mammals and Their Habitat

Construction of the boat ramp, public wharf and promenade, and floating docks has the potential to result in Level B behavioral harassment of Pacific harbor seals and California sea lions that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. The impact to these marine mammals is expected to be disturbance by the presence of workers, construction noise, and possibly construction vessel traffic if pile driving is to be conducted from a barge. Disturbances could alter seal and sea lion behaviors and cause the animals to temporarily disperse from the area, or to flush and possibly return at a later time or could result in temporary use of an alternate haul out site in Monterey Bay.

Noise from pile driving is expected to be much louder than all other noises from the construction. However, the impact hammer being selected has energy levels at 48–94 kJ (35,381–69,458 ft-lbs). These energy levels are significantly less than either of the two pile drivers being used on the San Francisco-Oakland Bay Bridge (SF–OBB) (see 68 FR 64595, November 14, 2003), which are 500 kJ and 1,700 kJ. As a result, airborne and underwater impact zones for marine mammals (and other aquatic life) will be significantly smaller than at SF–OBB.

Based on underwater noise levels measured in 2004 during a separate project at Pier 40 in San Francisco, the hammer's impulses were recorded approximately between 165–175 dB re 1 microPa rms at 10 m (32.8 ft), and 155–170 dB re 1 microPa rms at 20 m (65.6 ft) from the pile. These levels are significantly below 190 dB re 1 microPa rms, the level NMFS uses to estimate Level A harassment of pinnipeds and the onset of temporary threshold shift (TTS) in pinniped hearing (see 68 FR 64595, November 14, 2003).

A self-monitoring program was also conducted by a contractor in July 2006 to obtain airborne noise levels from pile driving. Time-averaged acoustic values in air ranged from 80 to 90 dB re 20 microPa, with peak discrete values approaching 100 dB re 20 microPa at 250 feet (76 m) from the sound source (Sea Engineering Inc., 2006). Studies have shown that when exposed to sound levels between 98.9 and 101 dB (re 20 microPa) from rocket launch, harbor seals responded by fleeing into the water but many returned to land within several hours (Stewart, 1993). Ringed seals (*Phoca hispida*) exhibited little or no reaction to pipe-driving noise measured at 112 and 96 dB re 20

microPa and 90 dB re 20 microPa<sup>2</sup>s (Blackwell *et al.*, 2004).

### Mitigation

The following mitigation measures are required under the IHA that has been issued to MLHD for construction activities, including pile driving, associated with the harbor redevelopment project at Moss Landing Harbor. NMFS believes that the implementation of these mitigation measures will reduce impacts to marine mammals to the lowest level practicable.

#### Time and Duration

The pile driving of the construction will be completed before December 2006 to avoid the migrating gray whales (*Eschrichtius robustus*). Construction activities, including pile driving, will only take place during daylight hours between 7 am to 5 pm, when marine mammal monitoring prior to and during the pile driving can be effectively implemented.

#### Establishment of Safety Zones

Before any pile driving, a clearly marked 250–ft (76 m) radius safety zone for Pacific harbor seals and California sea lions will be established. The safety zone would be marked by buoys for easy monitoring. At these distances, underwater sound pressure levels (SPLs) are expected to be significantly reduced from 165 - 175 dB re 1 microPa rms measured at 10 m (32.8 ft), and airborne noise levels are expected to be about 80 - 90 dB re 20 microPa. These SPLs are not believed to cause Level A harassment or onset of TTS (Level B harassment). A 500–ft radius safety zone was proposed in the proposed IHA (71 FR 53086), however, acoustic monitoring data show that it is overly conservative and would be difficult to monitor such a large area. Based on in-water and in-air acoustic monitoring data, NMFS believes that a 250–ft radius safety zone is sufficient to prevent Level A harassment and onset of TTS.

Marine mammal observers (MMOs) on a boat will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving begins. If marine mammals are found within the safety zone, pile driving will be delayed until they move out of the area. If a marine mammal is seen above the water and then dives below, pile driving will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a

mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994).

Once pile driving begins and an animal is seen or believed to entered the 250 ft (76 m) radius safety zone, the contractor must suspend pile driving and wait till the animal leaves the safety zone, or 15 minutes after the last sighting of the animal, before pile driving starts.

#### *Soft Start*

Although marine mammals will be protected from Level A harassment by establishment of a safety zone of 250-ft (76 m) radius, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area, thus further reducing the incidence of Level B harassment from startling marine mammals with a sudden intensive sound, MLHD will implement a "soft start" practice when startup pile driving. By implementing the "soft start" practice, pile driving would be initiated at an energy level less than full capacity (i.e., approximately 40–60 percent energy levels) for at least 5 minutes before gradually escalate to full capacity. This would ensure that, although not expected, any pinnipeds that are undetected during safety zone monitoring will not be injured.

#### *Compliance with Equipment Noise Standards*

To mitigate noise levels and, therefore, impacts to Pacific harbor seals and California sea lions, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

#### **Monitoring and Reporting**

MLHD must implement a monitoring plan that would collect data for each distinct marine mammal species observed during pile driving at the Moss Landing Harbor construction site. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving will be recorded.

Monitoring will be conducted by qualified NMFS-approved biologists. Binoculars and range finders will be provided to MMOs for accurately identifying species and determining distances.

Monitoring will begin prior to the first day of the pile driving to establish baseline data, and occur during the entire period when pile driving is underway, and continue for 30 minutes after the pile driving. Post construction monitoring will also be conducted for a period of one day upon completion of pile driving to identify any change of pinniped behaviors.

Before the startup of the pile driving, MMOs would visually survey the area to confirm the safety zone is clear of any marine mammals. Pile driving will not begin until the safety zone is clear of marine mammals. Monitoring would continue by the observers on a boat during the entire period of pile driving. However, as described in the Mitigation section, once pile driving begins, operations will continue uninterrupted until that pile is installed. However, if driving of a pile is completed and a marine mammal is sighted within the designated safety zone prior to commencement of the next pile driving, the observer(s) must notify the pile driver (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation).

MLHD will submit a final report to NMFS 90 days after completion of the project. The final report will include data collected for each distinct marine mammal species observed in the vicinity of the construction area during pile driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving would also be included in the final report.

#### **ESA**

Based on a review conducted by NMFS biologists, no ESA-listed species are expected to occur in the proposed action area. NMFS has determined that no species listed under the ESA are likely to be affected and, therefore, a section 7 consultation is not warranted.

#### **National Environmental Policy Act (NEPA)**

NMFS prepared an Environmental Assessment (EA) on the issuance of an IHA for the taking of marine mammals incidental to demolition of the Sandholdt Road Bridge and construction of a new bridge in Moss Landing, California, in 2004 and made a Finding of No Significant Impact (FONSI) on December 21, 2004. The proposed action discussed in this document is not substantially different from the action analyzed in the 2004 EA, and a reference search has indicated that no significant new scientific

information or analyses have been developed in the past 2 years that would warrant new NEPA documentation. Therefore, a new EA is not warranted for the proposed project.

#### **Determinations**

For the reasons discussed in this document and identified supporting documents, NMFS has determined that the impact of pile driving associated with Moss Landing Harbor redevelopment project would result, at worst, in the Level B harassment of small numbers of Pacific harbor seals and California sea lions in the vicinity of the proposed project area. While behavioral modifications, including temporarily vacating the area during the pile driving, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas near Monterey Bay and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on small numbers of Pacific harbor seal and California sea lion populations near the proposed project area.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

#### **Authorization**

NMFS has issued an IHA to MLHD for the potential harassment of small numbers of harbor seals and California sea lions incidental to Moss Landing Harbor redevelopment project in Moss Landing, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 31, 2006.

**James H. Lecky,**

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

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

[I.D. 101706F]

### **National Marine Fisheries Service; Notice of Availability of the Interim Final Ten Year Plan for the NOAA Aquaculture Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and