

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

28 July 2008

Mr. P. Michael Payne
Chief, Permits Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13635
Silver Spring, MD 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the California Department of Transportation under section 101(a)(5)(D) of the Marine Mammal Protection Act. The applicant is seeking authorization to take small numbers of marine mammals incidental to construction of a replacement for the east span of the San Francisco–Oakland Bay Bridge. The Commission also has reviewed the National Marine Fisheries Service’s 3 July 2008 *Federal Register* notice announcing receipt of the application and requesting comments on its proposal to issue the authorization, subject to certain conditions.

The applicant is requesting the renewal of an existing authorization to take by harassment small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales in San Francisco Bay during construction of the replacement bridge. The principal means of taking would be by disturbance resulting from construction noise (including pile driving) and construction vessel traffic. The Service’s *Federal Register* notice states that no pile driving was conducted during 2007.

RECOMMENDATION

Based on the information provided, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization, provided that the monitoring and mitigation activities proposed in the Service’s *Federal Register* notice are carried out as described.

RATIONALE

The Service has preliminarily determined that the impact of pile driving and other activities associated with construction of the bridge replacement should result, at most, in the Level B harassment (i.e., behavioral modifications including temporarily vacating the area around the construction site) of small numbers of the subject species that inhabit or transit through San Francisco Bay or that occur in the vicinity of the San Francisco–Oakland Bay Bridge. However, the Service believes that, because of the availability of alternative suitable habitat within the bay, including haul-out sites, pupping sites, and feeding areas, the proposed activity will have a negligible impact on these species.

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The Service's *Federal Register* notice states that for the 2008 construction period, pile driving would involve 42 to 48-in-diameter temporary piles, as opposed to the 5.9 to 8.2-ft-diameter permanent piles used in 2006. The notice states that deployment of air bubble curtains would not be feasible when driving the smaller piles due to the complexity of the driving frames. However, the Service notes that driving the smaller piles will produce far less sound and a much smaller zone of influence, even without bubble curtains. The notice states that the Service is proposing to require that the monitoring measures contained in the 2007 incidental harassment authorization be continued under the 2008 authorization, if issued. The Commission concurs with the Service's preliminary determination and proposed monitoring requirements. Therefore, the Marine Mammal Commission recommends that the Service grant the applicant's request, provided that the monitoring and mitigation activities proposed in the Service's *Federal Register* notice are carried out as described.

Please contact me if you have any questions concerning this recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director