



MARINE MAMMAL COMMISSION

28 November 2016

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the City of Kodiak Port and Harbors (the City) seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to replacement of a transient float in Kodiak, Alaska. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 10 November 2016 notice (81 Fed. Reg. 79350) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

The City plans to replace a transient float in the waters of Kodiak. Operators would install up to 12 24-in steel piles using a down-hole drill, vibratory hammer, and/or an impact hammer. They also would remove up to 19 12-in timber piles using a vibratory hammer. The City expects activities to take up to 12 days, weather permitting. It would limit pile-driving and -removal activities to daylight hours only¹.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of six marine mammal species². NMFS anticipates that any impact on the affected species and stocks would be negligible. NMFS also does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures include—

- using a sound attenuation device (e.g., pile caps) during impact driving of steel piles;
- ceasing heavy machinery activities if any marine mammal comes within 10 m of the equipment;

¹ Operators would refrain from installing piles using an impact hammer during the 12-hour period beginning at civil dawn from 1 May through 30 June to protect fish fry and smolt.

² After discussions with the Commission, NMFS indicated it plans to increase the number of takes of killer whales from 14 to 42 to account for the whales' frequency of occurrence during previous monitoring activities.

Ms. Jolie Harrison
28 November 2016
Page 2

- using standard³ soft-start, delay, and shut-down procedures;
- using two qualified land-based protected species observers to monitor the Level A⁴ and B harassment zones for 30 minutes before, during, and for 30 minutes after the proposed activities;
- using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to gray and fin whales) or if a species for which authorization has been granted but the authorized number of takes has been met, approaches or is observed within the Level B harassment zone;
- reporting injured and dead marine mammals to the Office of Protected Resources and the Alaska Stranding Coordinators using NMFS's phased approach and suspending activities, if appropriate; and
- submitting a final report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

³ NMFS informed the Commission that it incorrectly omitted from the *Federal Register* notice the standard 15- and 30-minute clearance times for small cetaceans and pinnipeds and large cetaceans, respectively. Those will be included in the final authorization.

⁴ NMFS also indicated that the Level A harassment zones for impact driving would be increased in the final authorization based on an error in its calculations and the assumption of a 100- rather than 50-msec pulse duration.