



MARINE MAMMAL COMMISSION

18 April 2017

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 Chevron 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 construction activities at Chevron's Richmond Refinery Long Wharf in Richmond, California. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 24 March 2017 notice (82 Fed. Reg. 15025) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

Chevron plans to repair and retrofit its wharf during a multi-year project. During the first year of activities, operators would install up to eight 24-in concrete piles using an impact hammer. Chevron expects activities to take up to 4 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 harbor seals and California sea lions. 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—

- conducting in-situ measurements during installation of four of eight concrete piles using an impact hammer² and adjusting the Level A and B harassment zones, as necessary;
- using a sound attenuation device (e.g., pile caps) during impact driving of concrete piles;

¹ Operators would refrain from installing piles using an impact hammer from December 1 through May 30 to protect listed fish.

² Given that scant data exist for source levels associated with installation of 24-in square concrete piles (including data on single strike sound exposure level metrics), the Commission inquired whether Chevron could conduct in-situ measurements. Chevron has agreed to conduct the measurements, and NMFS plans to require that in-situ measurements be taken during installation of four of eight piles in the final authorization.

- ceasing heavy machinery activities if any marine mammal comes within 10 m of the equipment;
- using standard soft-start, delay, and shut-down procedures;
- using two qualified land-based protected species observers to monitor the Level A and B harassment zones³ 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 whales or harbor porpoise) or if a species for which authorization has been granted but the authorized number of takes has been met⁴, approaches or is observed within the Level B harassment zone;
- reporting injured and dead marine mammals to the Office of Protected Resources and the West Coast Regional Stranding Coordinator 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. In addition, the Commission had made recommendations in its 3 January 2017 letter to NMFS regarding general improvements for authorizations involving pile-driving and -removal activities, including appropriate source level metrics. The Commission looks forward to working with NMFS to ensure those improvements are being made.

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

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

³ The Commission noted an error in NMFS's calculation of the proxy source level for the 24-in concrete piles. The source level should be 171 rather than 170 dB re 1 μ Pa. NMFS indicated it would re-calculate the estimated Level A and B harassment zones accordingly and include those revised zones in the final incidental harassment authorization.

⁴ NMFS informed the Commission that it incorrectly omitted from the *Federal Register* notice this mitigation measure, which would be included in the final authorization.