



MARINE MAMMAL COMMISSION

20 July 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 the San Francisco Bay Area Water Emergency Transportation Authority (SF WETA) seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to construction of SF WETA's Central Bay Operations and Maintenance Facility in Alameda, California. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 29 June 2017 notice (82 Fed. Reg. 29486) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

SF WETA plans to remove and install piles during construction of its new operations and maintenance facility. Operators would install up to 29 24- to 42-in steel piles and 20 14-in H-piles using a vibratory and impact hammer. They would remove the 14-in H-piles using a vibratory hammer. SF WETA expects activities to take 22 days, weather permitting. It would limit pile-driving and -removal activities to daylight hours from 1 August to 30 November 2017.

NMFS preliminarily has determined that, at most, the proposed activities could cause Level A and/or B harassment of small numbers of seven marine mammal species. 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 sound source measurements during impact and vibratory pile-driving activities¹ and adjusting the Level A and B harassment zones, if necessary;
- using a sound attenuation device (e.g., bubble curtain and pile cushion) during impact driving of piles;

¹ Measurements would be taken during impact installation of five each of the 24-, 36-, and 42-in piles and vibratory installation of two each of the 14- and 42-in piles. The Commission further clarified aspects of the hydroacoustic monitoring plan with NMFS, which will be included in the final authorization.

- ceasing pile-driving and -removal activities if any marine mammal comes within 10 m of the equipment;
- using two qualified land-based protected species observers to monitor the Level A and B harassment zones¹ for 30 minutes before, during, and for 30 minutes after the proposed activities;
- using standard soft-start, delay, and shut-down procedures;
- using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to humpback whales or Guadalupe fur seals) or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone;
- conducting marine mammal baseline observations on two separate days within one week of initiation of activities;
- 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.

Rounding of take estimates

The method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. As the Commission indicated in previous letters regarding this matter², the issue at hand involves policy rather than mathematical accuracy. The Commission understands NMFS has developed criteria associated with rounding that it had planned to share with the Commission a few months ago. Although NMFS has yet to provide those criteria, the Commission looks forward to receiving and reviewing them and resolving this matter expeditiously.

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

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

² See the Commission's [29 November 2016 letter](#) detailing this issue.