



MARINE MAMMAL COMMISSION

18 August 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 U.S. Navy's application seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take marine mammals by harassment. The taking would be incidental to pile driving and removal in association with a pier replacement project in San Diego Bay, California, during a one-year period. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 4 August 2017 notice (82 Fed. Reg. 36360) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

Background

The Navy plans to install and remove piles during demolition and replacement of the fuel pier at Naval Base Pt. Loma. This would be the fifth authorization for the proposed activities. During the fourth year of activities, the Navy would install 23 16-in concrete piles using a vibratory and/or an impact hammer. The Navy would remove up to 256 concrete or steel piles and 35 concrete-filled steel caissons using dead pull, clamshell bucket, diamond belt saw, pile cutter, plasma torch, jetting, and/or vibratory extraction. The Navy expects the proposed activities to occur for up to 196 days, primarily from 1 October 2017–30 April 2018. Activities would be limited to daylight hours only.

NMFS preliminarily has determined that, at most, the proposed activities would temporarily modify the behavior of small numbers of eight species of marine mammals. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for temporary or permanent hearing impairment would be at the least practicable level because of the proposed mitigation measures. The proposed mitigation, monitoring, and reporting measures¹ include—

¹ The Commission noted a few typos and errors in the *Federal Register* notice that NMFS indicated it would amend for the final authorization.

- conducting empirical sound measurements during installation of the concrete piles and removal of the multiple pile types using various demolition or removal methods;
- using soft-start, delay, and shut-down procedures;
- using delay and shut-down procedures if a species for which authorization has not been granted or for which the authorized numbers of takes have been met approaches or is observed within the Level B harassment zone;
- using one to two qualified protected species observers (land- and/or vessel-based) to monitor the Level A² and B harassment zones for 15 minutes before, during, and for 30 minutes after pile driving and removal activities;
- ceasing other heavy machinery work if any marine mammal comes within 10 m of the vessel or equipment;
- reporting injured and dead marine mammals to NMFS and West Coast Regional Stranding Coordinator using NMFS's phased reporting approach and suspending activities, if appropriate; and
- submitting draft and final acoustic and marine mammal monitoring reports to NMFS.

Rounding of take estimates

As the Commission has indicated in previous letters regarding this matter³, 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. The issue at hand involves policy rather than mathematical accuracy. The Commission notes that, although NMFS developed criteria associated with rounding that it had planned to share with the Commission a few months ago, it has yet to do so. Therefore, the Commission again recommends that NMFS share the rounding criteria with the Commission such that this matter can be resolved in the near future.

The Commission hopes its comments are useful. Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.,
Executive Director

² Those include an additional buffer zone to further reduce the potential for Level A harassment during pile driving and removal using an impact or vibratory hammer.

³ See the Commission's [29 November 2016 letter](#) detailing this issue.