



# MARINE MAMMAL COMMISSION

7 November 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 Alaska Department of Transportation and Public Facilities (AK DOT) 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 at the Haines Ferry Terminal in Alaska. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 13 October 2017 notice (82 Fed. Reg. 47700) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

AK DOT plans to remove and install piles during construction of the multi-use dock at the Haines Ferry Terminal. Operators would install up to 22 30-in and 15 36-in steel pipe piles using a vibratory and impact hammer. They would remove four 30-in steel pipe piles using a vibratory hammer and/or direct pull. AK DOT's activities could occur on up to 21 days, weather permitting. It would limit pile-driving and -removal activities to daylight hours and expects the activities to occur from 1 October 2018 to 30 September 2019.

NMFS preliminarily has determined that, at most, the proposed activities could cause Level A and/or B harassment of small numbers of six marine mammal species<sup>1</sup>. 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—

- restricting activities from 1 March to 31 May to avoid peak marine mammal presence;

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<sup>1</sup> The Commission informally (1) noted some errors in the estimated densities for Steller sea lions and Dall's porpoises, in the group size estimate for killer whales, and in the calculations for Level B harassment takes and (2) questioned the sufficiency of the proposed numbers of Level A harassment takes based on the proposed mitigation. After the various issues were rectified, numbers of Level B harassment takes decreased for four species and increased for two species and numbers of Level A harassment takes increased for three species. NMFS plans to include all relevant modifications and rationale in the final authorization.

- conducting in-situ source level and sound propagation measurements<sup>2</sup> during installation of each pile type and adjusting the sizes of the Level A and B harassment zones, as necessary;
- using a sound attenuation device (i.e., pile caps/cushions) during impact driving of piles;
- ceasing pile-driving and -removal activities<sup>3</sup> if any marine mammal comes within 10 m of the equipment;
- using two qualified protected species observers to monitor the Level A and B harassment zones for 30 minutes before, during, and for 30 minutes after the proposed activities;
- using standard soft-start, delay, and shut-down procedures<sup>4</sup>;
- using delay and shut-down procedures, if a species for which authorization has not been granted or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level A and/or B harassment zone;
- reporting injured and dead marine mammals to the Office of Protected Resources and the Alaska 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 has indicated in previous letters regarding this matter<sup>5</sup>, the issue at hand involves policy rather than mathematical accuracy. The Commission notes that NMFS has yet to share the criteria associated with rounding that it developed and planned to share with the Commission some time ago. Therefore, the Commission again recommends that NMFS share the rounding criteria with the Commission in the near term.

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

Sincerely,



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

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<sup>2</sup> AK DOT has revised its hydroacoustic monitoring plan based on comments from the Commission and NMFS. Those revisions include ensuring measurements are taken of both 30- and 36-in piles, ensuring ambient conditions are recorded appropriately (e.g., in continuous 10-minute intervals over multiple days), reporting the impulse duration and time interval over which vibratory driving would be averaged, etc.

<sup>3</sup> NMFS clarified that this measure would apply to all pile-driving and -removal activities beyond impact pile driving, as stated in the *Federal Register* notice. This clarification would be included in the final authorization.

<sup>4</sup> The Commission mentioned to NMFS that the 15-minute clearance time for large cetaceans was incorrect as proposed in the notice—those species can dive longer than 15 minutes. NMFS indicated it would include the standard 15-minute clearance time for smaller cetaceans and pinnipeds and 30-minute clearance time for large cetaceans in the final authorization.

<sup>5</sup> See the Commission's [29 November 2016 letter](#) detailing this issue.