



# MARINE MAMMAL COMMISSION

11 December 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 (the Navy) 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 in association with a wharf recapitalization project in Mayport, Florida, during a one-year period. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 27 November 2017 notice (82 Fed. Reg. 55990) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

The Navy plans to install piles during repair of the Bravo berthing wharf at Naval Station Mayport. The Navy would install up to 234 sheet piles using a vibratory and/or an impact hammer. The Navy expects installation of the piles to take up to 40 days, with 30 days of vibratory and 10 days of impact pile driving. It does not expect that impact pile driving would be needed for most of the piles. The Navy would use only one hammer, either vibratory or impact, at any given time. Activities would be limited to daylight hours only.

NMFS preliminarily has determined that, at most, the proposed activities would modify temporarily the behavior of small numbers of common bottlenose dolphins. 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 mitigation, monitoring, and reporting measures include—

- using 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 Atlantic spotted dolphins, humpback whales, and North Atlantic right whales) 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<sup>1</sup>;

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<sup>1</sup> NMFS informed the Commission that it omitted this mitigation measure from the *Federal Register* notice, and that it would be included in the final authorization.

- using two qualified protected species observers to monitor the Level A<sup>2</sup> and B harassment zones for 15 minutes before, during, and for 30 minutes after pile-driving activities;
- reporting injured and dead marine mammals to NMFS and Southeast Regional Stranding Coordinator using NMFS's phased reporting approach and suspending activities, if appropriate; and
- submitting a final monitoring report to NMFS.

### **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>3</sup>, the issue at hand involves policy rather than mathematical accuracy. Although NMFS developed criteria associated with rounding a year ago, it still has yet to share those criteria with the Commission. Therefore, the Commission again recommends that NMFS share the rounding criteria with the Commission expeditiously.

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

Sincerely,



Rebecca J. Lent, Ph.D.  
Executive Director

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<sup>2</sup> The Commission noted that the Navy, and thus NMFS, incorrectly used 1 sec rather than 100 msec as the pulse duration in its calculation of the extent of the Level A harassment zone for impact pile driving—resulting in a decrease from 7.7 to 1.7 m. NMFS indicated it would include the revised information in the final authorization, as well as specifics on the various inputs used to estimate the extent of the Level A harassment zones, which were absent from the *Federal Register* notice.

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