



# MARINE MAMMAL COMMISSION

30 April 2018

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 (the MMPA) to take marine mammals by harassment. The taking would be incidental to pile driving in association with a wharf recapitalization project in Mayport, Florida. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 4 April 2018 notice (83 Fed. Reg. 14443) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

The Navy plans to repair the Bravo berthing wharf at Naval Station Mayport. The Navy was issued a one-year authorization<sup>1</sup> to take marine mammals incidental to conducting the activities, but was unable to finish the project because of delays due to various issues (e.g., weather and tidal constraints and contractor inefficiencies) during that period. The Navy still needs to install 356 sheet piles using a vibratory and/or impact hammer for up to 53 days. NMFS proposes to require the Navy to use the same mitigation, monitoring, and reporting measures included in the previous authorization. NMFS's small numbers and negligible impact findings<sup>2</sup> also would remain unchanged. The Commission concurs with NMFS's preliminary findings and recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

## **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

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<sup>1</sup> The original authorization was valid from 1 December 2016 to 30 November 2017, but these dates subsequently were modified to 13 March 2017 to 12 March 2018

<sup>2</sup> NMFS indicated in the *Federal Register* notice that the abundance estimates had changed for the northern Florida coastal and southern migratory coastal stocks of common bottlenose dolphins, but did not specify what those changes were. Both stocks decreased in size but resulted either in comparable or slightly greater (4 vs 7 percent) percentages of the stocks proposed to be taken. The Commission notes that for transparency and completeness, this information should be included in the preamble to the final authorization.

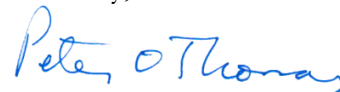
letters regarding this matter<sup>3</sup>, the issue at hand involves policy rather than mathematical accuracy. Although NMFS developed criteria associated with rounding quite some time ago, NMFS has indicated that the draft criteria need additional revisions before it can share them with the Commission. Therefore, the Commission recommends that NMFS promptly revise its draft rounding criteria in order to share them with the Commission expeditiously.

### **Abbreviated *Federal Register* notices**

Given that much of the information relevant to this proposed authorization for conducting repairs at Bravo wharf had been included and reviewed in previous documents, NMFS published the required information<sup>4</sup> via an abbreviated *Federal Register* notice referencing those earlier documents. The Commission has opposed NMFS's recent proposals to allow renewals of incidental harassment authorizations without an opportunity for additional public review and comment. The Commission believes that NMFS's proposed renewal process is inconsistent with the requirements of section 101(a)(5)(D), which limit such authorizations to "periods of not more than 1 year" and, unless subject to public notice and comment opportunities concurrent with consideration of a renewal, would undercut the MMPA's requirements for public involvement. The abbreviated process being followed in this instance preserves the full opportunity for public review and comment. As such, it is preferable to NMFS's proposed renewal process and does not appear to be unduly burdensome on either the applicant or NMFS. Therefore, the Commission recommends that NMFS, in lieu of adopting its proposed renewal process for extending authorizations beyond their original one-year period of validity without providing a new opportunity for public review and comment, use abbreviated *Federal Register* notices and reference existing documents to streamline the incidental harassment authorization process, as is being done in this instance. The abbreviated process clearly meets the public notice and comment requirements of the MMPA and provides the necessary separation between the original and subsequent authorization(s) so that no one can credibly contend that NMFS is impermissibly extending an authorization beyond the statutory one-year limit.

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

Sincerely,



Peter O. Thomas, Ph.D.,  
Executive Director

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

<sup>4</sup> Including any changes to the proposed activities or assumptions made and results from the draft monitoring report.