



MARINE MAMMAL COMMISSION

5 November 2020

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 request submitted by Port of Kalama (POK) seeking renewal of an authorization issued 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 the Kalama Manufacturing and Marine Export Facility on the Columbia River in Washington. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 21 October 2020 notice (85 Fed. Reg. 66957) on its proposal to issue an authorization renewal, subject to certain conditions.

POK submitted its original application to conduct the various pile-driving and -removal activities in 2015. Since that time, NMFS has issued and re-issued multiple incidental harassment authorizations for the proposed activities (85 Fed. Reg. 66958–66959). POK's most recent authorization expired on 18 October 2020, and POK has yet to conduct any of its proposed activities. The Commission last commented on POK's proposed activities in its [23 August 2018 letter](#), and its recommendations in that letter are still pertinent more than two years later.

Appropriateness of the Level A harassment zones

As noted in August 2018, to estimate the extents of the Level A harassment zones, POK and ultimately NMFS assumed that pinnipeds would be subjected to only 1 hour of pile-driving activities each day. The 1-hour duration was based on a lack of specific haul-out sites in the immediate project area and the assumption that pinnipeds would be transiting through the area and would not be present for a full 8-hour day of pile driving¹. That assumption may be true for otariids that are transiting the area when going to and from Bonneville Dam. However, that assumption is not necessarily true for harbor seals.

POK's 2018 application addendum indicated that harbor seals reside year-round in the Columbia River, and they are observed frequently in the vicinity of the project area. Specifically, they congregate to feed at the mouths of the Kalama and Cowlitz Rivers (approximately 1 mile upstream and 3.5 miles downstream of the project site, respectively) during the winter months. Anecdotal

¹ With up to 8 piles installed per day.

reports indicate that some harbor seals are resident and occur year-round near the mouths of the two rivers. Further, shoals near the confluence of the Cowlitz and Columbia Rivers are documented haul-out sites for harbor seals. Thus, POK indicated that harbor seals could be moving through the project area to the mouth of the Kalama or Cowlitz Rivers, could remain in the project area for several days, or could travel back and forth between the two river mouths, passing through the area multiple times. As such, assuming that harbor seals would be subjected to only 1 hour of pile driving per day is not substantiated.

In general, Level A harassment zones for impact pile driving are much larger than for vibratory pile driving. POK indicated that impact driving would be necessary for installation of concrete piles and may be necessary for proofing or for a portion of the installation of steel piles, if vibratory installation is insufficient. The Commission agrees with NMFS's assumption that only 1 hour of impact pile driving may be necessary for installation of steel piles, but does not agree that the same assumption should apply to installation of concrete piles. POK and NMFS should have assumed that harbor seals could be subjected to impact driving of concrete piles for 8 hours per day rather than 1 hour per day². Based on either the 8-hour per day or 8-piles driven per day scenario, the Level A harassment zones would increase from 40 to 160 m. Such a zone is still less than the estimated extent of the Level A harassment zone for impact driving of steel piles (i.e., 252 m) and is consistent with NMFS's approach for its other proposed authorizations, including the authorization for the Coast Guard³ that also published for public comment on 21 October 2020 (85 Fed. Reg. 66950). Further, the Level A harassment zone for vibratory installation should be revised as well if that activity could occur for up to 8 hours per day⁴, which would result in a revised Level A harassment zone of 66 rather than 16 m. Therefore, the Commission recommends that NMFS revise its Level A harassment zones for harbor seals during impact driving of concrete piles and vibratory driving of steel piles based on 8 piles to be driven per day⁵. This approach is consistent with the manner in which NMFS has been estimating the extents of the Level A harassment zones since finalizing its Technical Guidance in 2016.

As stipulated in its August 2018 letter, the Commission reiterates that NMFS needs to investigate further the appropriate timeframes over which sound exposure levels should be accumulated when estimating the extents of the Level A harassment zones—an issue that was not investigated prior to NMFS finalizing its Technical Guidance nor resolved in the past two years. The Commission understands that NMFS has formed an internal committee to address this issue and had consulted with external acousticians and modelers. In the absence of relevant recovery time data for marine mammals, the Commission continues to believe that animal modeling that considers various operational and animal scenarios should be used to inform the appropriate accumulation time and could be incorporated into NMFS's user spreadsheet that currently estimates the Level A harassment zones. The Commission recommends that NMFS prioritize resolving this issue in the near future and consider incorporating animal modeling into its user spreadsheet.

² The Commission notes that NMFS generally does not estimate the Level A harassment zones for impact pile driving based on the hours of activities. It estimates the extents of the Level A harassment zones based on the number of strikes per pile and the number of piles that could be driven in a given day.

³ NMFS assumed that 1,748 strikes would be necessary to install a single 30-in concrete pile and that six piles would be installed on a given day (see Tables 6 and 7 of the *Federal Register* notice).

⁴ This approach also is the same as NMFS's approach for its recent proposed authorization for the U.S. Navy (see Tables 7 and 8 at 85 Fed. Reg. 48218–48219).

⁵ Or 8 hours of activities as denoted by NMFS.

Reporting measures

Since NMFS proposed to renew POK's 2019 incidental harassment authorization, and that authorization was a re-issuance of its 2018 authorization, the reporting measures included in section 6(a) of the draft authorization renewal⁶ are subpar. In fact, NMFS does not specify in the draft authorization renewal what specific information POK would be required to include in its monitoring report. The lack of detailed information is inconsistent with the other authorizations issued by NMFS in the last few years. The Commission recommends that NMFS include in section 6(a) of POK's final authorization renewal items 6(b)(i) to (xiii) as specified in the recent reissuance of the final authorization for Gastineau Channel Historical Society⁷. The Commission notes that POK would need to extrapolate the numbers of animals taken based on both the portions of the Level B harassment zones not able to be observed on a given day *and* based on the days that POK would not be conducting monitoring during vibratory installation or removal⁸. That clarification should be specified in item xii as well.

It is unclear whether the POK would keep a running tally of the total Level A and B harassment takes, including observed and extrapolated takes. This is especially important for POK since it would conduct monitoring during only a portion of the 153 days of activities. Keeping a running tally of takes would ensure that the numbers of authorized takes are not exceeded and inform when condition 4(f)(iii) in the draft authorization renewal would need to be implemented. The Commission recommends that NMFS reinforce the need for POK to keep a running tally of the total Level B harassment takes based on observed and extrapolated takes.

One-year authorization renewals

The Commission has raised ongoing concerns regarding NMFS's renewal process for a number of years. NMFS responded to those concerns most recently in summer 2020. The Commission intends to respond in detail to NMFS's letter in separate correspondence. Until that time, the Commission recommends that NMFS refrain from issuing a renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA.

Please contact me if you have questions regarding the Commission's recommendations.

Sincerely,



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

⁶ https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-10/PortofKalamaColumbiaRiver_2020IHARenewal_Draft_OPR1.pdf?null=

⁷ https://s3.amazonaws.com/media.fisheries.noaa.gov/2020-10/Sentinel_reissue_IHA_2020_OPR1.pdf?null=

⁸ The Level B harassment zone for those activities would be monitored on the first two days of vibratory pile driving or removal and every third day thereafter.