



MARINE MAMMAL COMMISSION

4 August 2014

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 Port of Friday Harbor (the Port) seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to replacement of structures at a marina in Friday Harbor, Washington. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 25 July 2014 notice (79 Fed. Reg. 43402) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

Background

The Port plans to repair and reconstruct various structures within the marina. During the project, operators would remove 95 12- to 20-in timber piles using a vibratory hammer or clamshell bucket. They also would install 20 16-in and 32 24-in steel piles using a vibratory hammer and confined drill. The Port expects pile removal and installation to take 29 days (weather permitting) between 1 September 2014 and 15 February 2015. It would limit activities to daylight hours only.

NMFS preliminarily has determined that, at most, the proposed activities would modify temporarily the behavior of small numbers of five marine mammal species. 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 and monitoring measures. The measures include—

- using no more than one vibratory hammer at any given time to remove/install piles;
- using four NMFS-approved protected species observers (two land- and two vessel-based) to monitor 15 minutes prior to, during, and 30 minutes after vibratory pile removal and driving;
- ceasing heavy machinery activities if a marine mammal comes within 10 m of the activity;
- using ramp-up, delay, and shut-down procedures during vibratory pile removal and driving;
- obtaining in-situ marine mammal sightings data from the Orca Network and/or Center for Whale Research on a daily basis and, if a southern resident killer whale is sighted, on a real-time basis;

- obtaining in-situ marine mammal acoustic detection data from the Orca Network on a daily basis to supplement its monitoring efforts;
- reporting injured and dead marine mammals to NMFS and local stranding network using NMFS's phased approach and suspending activities, if appropriate, and
- submitting a final report.

The Commission understands that NMFS would specify in its incidental harassment authorization that the Port would delay or cease vibratory pile driving or removal if an animal(s) from any species or stock for which authorization has not been granted¹ approaches or is observed within the Level B harassment zone and would not resume those activities until the animal(s) has been observed to leave the Level B harassment zone. The Commission concurs with including such specifications within the final authorization for clarity's sake.

Harbor seal correction factor

In previous letters to NMFS, the Commission has made recommendations regarding the appropriateness of harbor seal correction factors for various activities within inland Washington waters. Those recommendations were based on the Commission's belief that if site- or area-specific correction factors were available that those factors should be used rather than pooled correction factors, some of which are combined factors based on haul-out behavior of coastal and inland populations. For the proposed incidental harassment authorization, the Port and NMFS used the haul-out correction factor of 1.53 (Huber et al. 2001)—a combined correction factor for both coastal and inland waters of Washington. Huber et al. (2001) also determined pooled correction factors of 1.50 and 1.57 for coastal and inland waters, respectively. NMFS stated that it retained the combined correction factor of 1.53 because Huber et al. (2001) found no significant difference in the proportion of seals ashore amongst the six sites ($P=0.10$). Coincidentally, the haul-out correction factor for the site within the San Juan Islands area was 1.85², which is the greatest of all six sites (range of 1.36–1.85; Huber et al. 2001) and overlaps with the abundance data the Port and NMFS used from Jeffries et al. (2003) for the San Juan Islands. The Commission continues to believe NMFS should be using the best available data to inform the analyses conducted under its incidental harassment authorizations, which in this case includes the use of a haul-out correction factor from the San Juan Islands. Huber et al. (2001) may not have found a significant difference amongst the correction factors when considered by NMFS *in vacuo*. However, the number of harbor seal takes would increase by more than 35 percent if the area-specific correction factor for the San Juan Islands was used instead of the combined correction factor. The Commission considers that level of increase significant, and likely statistically significant, and believes it should be the foundation upon which NMFS should base its analyses for both small numbers and negligible impact determinations. For these reasons, the Commission recommends that NMFS require the Port to re-estimate the number of harbor seal takes using the area-specific haul-out correction factor of 1.85 from Huber et al. (2001). In a recent incidental harassment authorization issuance, NMFS proposed to discuss the appropriate use of available information for harbor seals³ prior to considering any future requests for take authorization in Hood Canal (79 Fed. Reg. 43432). The Commission would suggest

¹ Or for which authorization has been granted but the taking limit has been met, which is implied in the authorization.

² For the Protection and Smith Islands sites.

³ Including appropriate haul-out correction factors used to estimate densities.

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expanding that discussion to all activities proposed for inland Washington waters and welcomes such a discussion.

Thank you for carefully considering the enclosed comments and recommendations. The Commission looks forward to receiving your responses. Please contact me if you have questions about our recommendation or rationale.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

References

- Huber, H. R., S.J. Jeffries, R.F. Brown, R.L. DeLong, and G. VanBlaricom. 2001. Correcting aerial survey counts of harbor seals (*Phoca vitulina richardsi*) in Washington and Oregon. *Marine Mammal Science* 17(2):276–293.
- Jeffries, S., H. Huber, J. Calambokidis, and J. Laake. 2003. Trends and status of harbor seals in Washington State: 1978-1999. *The Journal of Wildlife Management* 67(1): 208–219.