



MARINE MAMMAL COMMISSION

20 August 2015

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 Bergerson Construction, Inc., (Bergerson) 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 construction of a new Front Street Marine Transload Facility in Newport, Oregon. The incidental harassment authorization would be valid for one year. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 13 August 2015 notice (80 Fed. Reg. 48500) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

Bergerson plans to construct a new transload and fish buying facility at the current Undersea Gardens attraction in Yaquina Bay. The operators would remove 25 12-in steel or timber piles using a vibratory hammer and would install 112 24-in steel pipe piles and 14 18-in steel fender piles using a vibratory hammer and/or impact hammer. Bergerson expects pile removal to take 30 days, weather permitting. It would limit activities to daylight hours only during the timeframe from 1 November 2015 to 15 February 2016.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals¹ and California sea lions. 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 proposed mitigation, monitoring, and reporting measures include—

- using a sound attenuation device (i.e., a bubble curtain system) during impact pile driving;
- using only one vibratory hammer at a given time;
- using two NMFS-approved protected species observers (one in the near-field and one in the far-field) to monitor the Level A and B harassment zones 30 minutes prior to, during, and 30 minutes after vibratory pile removal;

¹ The Commission understands that NMFS has increased its take estimate to 1,020 seals based on the assumption that seals from multiple nearby haul-out sites could forage within the Level B harassment zone during the proposed activities.

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- using ramp-up procedures;
- using delay and shut-down procedures if a species for which authorization has not been granted approaches or is observed within the Level B harassment zone;
- using delay and shut-down procedures if the number of marine mammal takes for any species or stock reaches the limit authorized for that species or stock under the incidental harassment authorization and an animal from that species or stock approaches the Level B harassment zone;
- reporting injured and dead marine mammals to NMFS and the local stranding network using NMFS's phased approach and suspending activities, if appropriate; and
- submitting a final report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

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

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director