



MARINE MAMMAL COMMISSION

3 September 2013

Mr. P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission (the MMC), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the U.S. Navy's 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 repair project in Mayport, Florida. The authorization would be in effect from 1 December 2013 until 30 November 2014. The MMC also has reviewed the National Marine Fisheries Service's (NMFS) 22 August 2013 notice (78 Fed. Reg. 52148) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the incidental harassment authorization but require the Navy to—

- implement soft-start procedures if impact pile-driving activities have ceased for at least 15 minutes; and
- monitor the extent of the Level B harassment zones by strategically positioning the observers (e.g., one monitoring the immediate shut-down zone and portions of the turning basin and the other monitoring portions of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean) to (1) determine more accurately the numbers of marine mammals taken during pile-driving activities and (2) characterize the effects on those marine mammals.

RATIONALE

The Navy plans to install piles during repair of a berthing wharf at Naval Station Mayport, east of Jacksonville, Florida. The Navy would install 120 single sheet steel piles, 119 steel king piles, and 50 polymeric piles using a vibratory and an impact hammer. The Navy expects vibratory installation of the piles to take 50 days, with a contingency of 20 days for 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 temporarily would modify the behavior of small numbers of bottlenose dolphins and Atlantic spotted 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 and monitoring measures. Those measures include—

- conducting empirical in-water and in-air sound measurements of (1) installation of the various types of piles using a vibratory and impact hammer and (2) ambient underwater sound;
- using soft-start, delay, and shut-down procedures;
- using qualified protected species observers to monitor the harassment zones for 15 minutes before, during, and for 15 minutes after pile-driving activities;
- reporting injured and dead marine mammals to NMFS and local stranding network using NMFS's phased reporting approach and suspending activities, if appropriate; and
- submitting acoustic and marine mammal monitoring reports to NMFS.

Mitigation and monitoring measures

NMFS would require the Navy to implement soft-start procedures only during impact pile driving at the beginning of each work day and when impact pile-driving activities have ceased for more than 30 minutes. NMFS also would require the Navy to cease pile driving if a marine mammal is sighted within or on a path to enter a shut-down zone (based on Level A harassment). The Navy could resume activities when the marine mammal has cleared the zone and is on a path away from the zone or when 15 minutes has elapsed since the last sighting of that mammal. The authorization then would allow the Navy to resume pile driving at full power. However, several factors indicate that the Navy should implement soft-start procedures. Although they probably rarely do so, dolphins are capable of diving for periods approaching 15 minutes. In addition, the observer may not detect a dolphin at the surface if s/he is not watching the area where it surfaces at that given time. In this instance, dolphins also may be observed less frequently because they occur either singly or in pairs in the Mayport turning basin. Full starts could pose a risk to dolphins that either remain in the shut-down zone or, more importantly, enter it undetected after the activities have ceased. As stated in previous letters, the MMC continues to believe that to avoid serious injury to small- to medium-sized cetaceans soft-start procedures should be used after a shutdown of 15 minutes. Therefore, the MMC recommends that NMFS require the Navy to implement soft-start procedures if impact pile-driving activities have ceased for at least 15 minutes.

NMFS would not require soft-start procedures to be implemented for vibratory pile driving. The *Federal Register* notice indicated that soft-start procedures during vibratory pile driving at another Navy base led to equipment failure and serious human safety concerns. NMFS did indicate in the *Federal Register* notice that, prior to issuing any further incidental harassment authorizations to the Navy for pile driving activities in 2014 or beyond, it would facilitate a consultation between the Navy and other operators (i.e., Washington Department of Transportation and/or California Department of Transportation) with the objective of determining if human safety issues are inherent to the implementation of that mitigation measure or if those safety issues are associated with human error. The MMC supports that plan and encourages NMFS to brief the MMC on the consultation

Mr. P. Michael Payne
3 September 2013
Page 3

findings before processing and submitting the 2014 proposed incidental harassment authorizations for public comment in the Federal Register notice.

The Navy has indicated that it intends to use observers to monitor visually the disturbance zone (i.e., the Level B harassment zone that has a radius of more than 7 km for vibratory pile driving), a small portion of which extends into the Atlantic Ocean. The Service indicated that the Navy likely would have two shore-based observers monitoring at a given time and that those observers likely would be stationed within the turning basin. Because much of the disturbance zone is surrounded by land, a small number of strategically positioned observers could collect the data needed to assess changes in marine mammal behavior as a function of distance from the activities and to determine accurately the numbers of marine mammals taken during those activities. Therefore, the MMC recommends that NMFS require the Navy to monitor the extent of the Level B harassment zones by strategically positioning the observers (e.g., one monitoring the immediate shut-down zone and portions of the turning basin and the other monitoring portions of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean) to (1) determine more accurately the numbers of marine mammals taken during pile-driving activities and (2) characterize the effects on those marine mammals.

Thanks for the opportunity to provide comments on the Navy's application. Please contact me if you have questions regarding the MMC's comments and recommendations.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director