



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-BC69

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Replacement of the Elliott Bay Seawall in Seattle, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Seattle Department of Transportation (SDOT), on behalf of the City of Seattle (City), for authorization for the take, by Level B harassment, of marine mammals incidental to construction associated with the replacement of the Elliott Bay Seawall in Seattle, Washington, for the period September 2013-September 2018. Pursuant to Marine Mammal Protection Act (MMPA) implementing regulations, NMFS is announcing receipt of SDOT's request for the development and implementation of 5-year regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on SDOT's application and request.

DATES: Comments and information must be received no later than [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for

providing e-mail comments is [ITP.Magliocca@noaa.gov](mailto:ITP.Magliocca@noaa.gov). NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427-8400.

SUPPLEMENTARY INFORMATION:

Availability

A copy of SDOT's application may be obtained by visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

#### Summary of Request

On September 17, 2012, NMFS received a complete application from SDOT requesting authorization for the take of nine marine mammal species incidental to replacement of the Elliott Bay Seawall in Seattle, Washington over the course of 5 years, which would necessitate the promulgation of 5-year regulations. The purpose of the proposed project is to reduce the risks of coastal storm and seismic damage and to protect public safety, critical infrastructure, and associated economic activities in the area. Additionally, the project would improve the degraded ecosystem functions and processes of the Elliott Bay nearshore around the existing seawall. Noise produced during pile installation and removal activities has the potential to take marine

mammals. SDOT requests authorization to take nine marine mammal species by Level B harassment only: Pacific harbor seal (Phoca vitulina), California sea lion (Zalophus californianus), Steller sea lion (Eumetopias jubatus), harbor porpoise (Phocoena phocoena), Dall's porpoise (Phocoenoides dalli), both southern resident and transient killer whales (Orcinus orca), humpback whale (Megaptera novaengliae), and gray whale (Eschrichtius jubatus). Injury or mortality is unlikely during the proposed project, and take by Level A harassment (including injury) or mortality is not requested in SDOT's application.

#### Specified Activities

In the application submitted to NMFS, SDOT requests authorization to take marine mammals incidental to replacement of the Elliott Bay Seawall. Construction activities, namely vibratory and impact pile installation and removal, would occur in two phases. Phase 1 involves construction of the Central Seawall and Phase 2 involves construction of the North Seawall. The entire project is expected to take 7 years, but SDOT's request covers the first 5 years. Section 2 of SDOT's application describes the activities in detail, as well as the location and construction schedule.

#### Information Solicited

Interested persons may submit information, suggestions, and comments concerning SDOT's request (see ADDRESSES). All information, suggestions, and comments related to SDOT's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by SDOT's activities will be considered by NMFS in

developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: October 18, 2012.

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Helen M. Golde,  
Acting Director,  
Office of Protected Resources,  
National Marine Fisheries Service.

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