



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648- XD568

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

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the City of Seattle's Department of Transportation (SDOT) for the take of eight species of marine mammals incidental to pile driving activities associated with the Elliott Bay Seawall Project (EBSP).

DATES: Effective from October 22, 2014, through October 21, 2015.

ADDRESSES: The LOA and supporting documentation are available for review on the Internet at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. Documents cited in this notice may also be viewed, by appointment, during regular business hours at the Office of Protected Resources, National Marine Fisheries Service 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs 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. Under the MMPA, the term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill marine mammals.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified 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 in the regulations. 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."

Regulations governing the taking of harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus monteriensis*), harbor porpoise (*Phocoena phocoena vomerina*), Dall’s porpoise (*Phocoenoides dalli dalli*), southern resident and transient killer whales (*Orcinus orca*), gray whales (*Eschrichtius robustus*), and humpback whales (*Megaptera novaeangliae*), by harassment, incidental to pile driving activities in Elliott Bay, were issued on October 21, 2013 (78 FR 63396, October 24, 2013), and remain in effect until October 21, 2018. For detailed information on this action, please refer to that

document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during pile driving activities associated with the Elliott Bay Seawall.

Pursuant to those regulations, NMFS first issued an LOA, effective from October 22, 2013, through October 21, 2014. SDOT conducted activities as described, implemented the required mitigation measures, and conducted the required monitoring. The total number of potentially harassed marine mammals was well below the authorized limits, with the exception of the California sea lion. The reported take for California sea lion, by Level B harassment only, exceeded the annually authorized level by a small amount (186 versus 175). This overage does not affect the negligible impact, small numbers, and subsistence findings. In examining the proposed and final rules, we determined that an error was made in estimating take of California sea lions. We plan to correct that error through notification and opportunity for public comment in the Federal Register. Once corrected, the amount of take will not likely exceed authorized levels and we expect the correction will be made before SDOT approaches the amount authorized in the current subject LOA.

Authorization

NMFS has issued an LOA to SDOT authorizing the Level B harassment of marine mammals incidental to pile driving activities associated with the Elliott Bay Seawall Project at Seattle, Washington. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) limited impact pile driving; (2) containment of impact pile driving; (3) additional sound attenuation measures; (4) ramp-up of pile-related activities; (5) marine mammal exclusion zones; and (6) shutdown and delay procedures. SDOT will also conduct visual monitoring and underwater acoustic monitoring for mitigation and research

purposes. Reports will be submitted to NMFS at the time of request for a renewal of the LOA, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires.

Issuance of this LOA is based on the results of the monitoring report, which verifies that the total number of potentially harassed marine mammals was below the authorized limits, with the exception of the California sea lion (as discussed above). Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses. No injury, serious injury, or mortality of affected species is anticipated.

Dated: October 21, 2014.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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