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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD444

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to San Francisco Bay Area Water Emergency Transportation Authority Central Bay Operations and Maintenance Facility Project in Alameda, California

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the San Francisco Bay Area Water Emergency Transportation Authority (WETA) to take, by harassment, small numbers of two species of marine mammals incidental to pile driving and removal associated with the Central Bay Operations and Maintenance Facility Project in the City of Alameda, California, between December 1, 2015, through November 30, 2016.

DATES: Effective December 1, 2015, through November 30, 2016.

ADDRESSES: A copy of the application containing a list of the references used in this document, NMFS's Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained visiting the Internet at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

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.

An 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 April 9, 2014, NMFS received an application from WETA for the taking of marine mammals incidental to the construction of a Central Bay Operations and Maintenance Facility (Project). The purpose of the Project is to serve as the central San Francisco Bay (Bay) base for WETA's ferry fleet. After NMFS provided comments on the draft IHA application, WETA submitted a revised IHA application on May 15, 2014. NMFS determined that the application was adequate and complete on July 31, 2014. No changes was made for the proposed WETA's construction Project as described in the proposed IHA except the Project duration was changed to December 1, 2015, through November 30, 2016, from the original June 15 through October 15, 2014, due to funding and other constraints. Please refer to Federal Register notice for the proposed IHA for a detailed description of the project activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to WETA was published in the Federal Register on September 17, 2014 (79 FR 55479). That notice described, in detail, WETA's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the Sierra Club, the San Francisco Bay Conservation and Development Commission (BCDC), and 40 private citizens. All comments specific to WETA's application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

Comment 1: The Commission recommends NMFS issue the IHA to WETA, subject to inclusion of the proposed mitigation and monitoring measures described in the proposed IHA. In addition, the Commission recommends that NMFS only authorize in-season adjustments in the sizes of the exclusion and/or disturbance zones (zones of influence) if the size(s) of the estimated zones are determined to be too small.

Response: NMFS agrees with the Commission's recommendation and has issued the IHA with mitigation and monitoring measures described below in this document, with the requirement that the exclusion and/or zones of influence be adjusted only of the size(s) of the estimated zones are determined to be too small.

Comment 2: Citing WETA's permit application to BCDC to construct the Central Bay Operations and Maintenance Facility Project, BCDC points out that an abandoned small craft floating dock located at the proposed project site that harbor seals use as a haul-out site, would be removed for the construction. BCDC states that there are relatively few haul-out locations in the Bay for harbor seals, and BCDC is concerned that removal of a haul-out location may result in harmful impacts to wildlife. The Sierra Club and 40 private citizens also have concerns about the loss of a harbor seal haul-out due to the removal of the floating dock.

BSDC recommends that NMFS review the potential habitat impacts associated with removal of these harbor seal haul-out locations, including suggestions for mitigation and monitoring, where appropriate, as part of the IHA application for the project.

Response: NMFS was not aware this issue during its initial analysis of potential impacts to the loss of one harbor seal haul-out site as a result of the proposed WETA construction project in the Bay. Therefore, the potential impact of marine mammal habitat did not address this in the Federal Register (79 FR 55479; September 17, 2014) for the proposed

IHA. Subsequently, NMFS conducted further investigation and worked with NMFS West Coast Regional Office to assess the potential impacts to harbor seal haul-out and habitat in general in the Bay.

The harbor seal haul-out site that would be affected is a small craft dock located at the project site and was abandoned by the Navy when it vacated the Naval Air Station-Alameda in 1997. The unmaintained dock has been deteriorating slowly over the last 17 years and the deterioration has appeared to be accelerating in the last five years. In 2010, the portion connecting the floating dock to land broke off and sank, leaving remnant parts of the floating dock isolated from land. Since 2010, additional remnant parts of the marina have also been lost. During this period of time harbor seals have been opportunistically using the dock for haul-out purposes. At present, seals have been observed by local residents hauling out on the portion of the dock that is furthest from shore.

It is observed that on an average, about 10 to 20 harbor seals use the floating dock as haul-out periodically. Although during the spring of 2014, one pup was observed reared at the floating dock, the site is not a known breeding area for harbor seal. Because the dock has been in a gradual state of decay since the closure of the naval base and will likely continue to fall apart, the haul-out area on the dock provided for harbor seals is expected to decrease and eventually disappear.

Finally, several nearby haul-out sites are available in the Bay that are available to resident harbor seals in the area. These areas include the tip of Breakwater Island (1 mile from the WETA project site) and the haul-out at Yerba Buena Island (4 to 5 miles from the WETA project site) which is identified as one of the five major haul-out sites for harbor seals in the San Francisco Bay (Gibble 2011).

Therefore, the removal of the remnant abandoned dock would have negligible impact to harbor seal habitat in the proposed WETA construction site.

NMFS has thoroughly reviewed WETA's IHA application, including the proposed mitigation and monitoring measures to reduce potential impacts from the construction activities. These mitigation and monitoring measures include using noise attenuation devices for impact pile driving, power down / shutdown of pile driving hammer if a marine mammal is observed approaching the exclusion zone, and monitoring the exclusion zones and zones of influence. Detailed description of these monitoring and mitigation measures and NMFS analysis is provided in the **Federal Register** (79 FR 55479; September 17, 2014) for the proposed IHA, therefore, it is not repeated here.

Comment 3: The Sierra Club and several private citizens recommend that NMFS requires WETA to construct a new haul-out dock nearby to compensate and mitigate the loss of harbor seal haul-out, if the current old floating dock is to be removed.

Response: NMFS does not consider building an artificial harbor seal haul-out is a good conservation measure to compensate for the loss of the old floating dock that is being used as a haul-out by 10 – 20 harbor seals. As the Sierra Club also stated in its comment, "[i]n the case of the WETA ferry facility project, it is not a traditional natural shoreline that will be disturbed or destroyed." The floating dock proposed to be removed is a manmade structure that is bound to disappear as it deteriorates and falls apart. To build another new structure without maintenance will likely have the same issue in the near future. Therefore, NMFS considers it better conservation practice not to construct a new structure just to replace the current deteriorating artificial one.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*) and California sea lion (*Zalophus californianus*). Although harbor porpoise (*Phocoena phocoena*), killer whale (*Orcinus orca*), and gray whale (*Eschrichtius robustus*) have been sighted near the vicinity of the proposed construction area, their presence at the activity area is considered unlikely, because the proposed construction area is not typical habitat for these species. The southern sea otter (*Enhydra lutris*) also may occur in the proposed construction area, but that species is managed by the U.S. Fish and Wildlife Service and is not considered further in this proposed IHA notice. A list of the marine mammal species under NMFS jurisdiction and their abundance and Endangered Species Act (ESA) status is provided in Table 1.

Additional information on the marine mammal species found in California waters can be found in Caretta et al. (2013), which is available at the following URL: http://www.nmfs.noaa.gov/pr/sars/pdf/po2012.pdf, and in the **Federal Register** notice (79 FR 55479) for the proposed IHA.

Table 1. List of Marine Mammal Species under NMFS Jurisdiction that Occur in the Vicinity of the WETA Central Bay Operations and Maintenance Facility Project Area

Common Name	**Scientific Name**	**Stock**	**ESA Status**	**Abundance**
California sea lion	Zalophus californianus	U.S.	Not listed	296,750
Harbor seal	Phoca vitulina richardsi	California	Not listed	30,196

Potential Effects of the Specified Activity on Marine Mammals and Marine Mammal Habitat

The primary potential impacts to marine mammals and marine mammal habitat are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term, local water turbidity caused by in-water

construction due to pile removal and pile driving. These potential effects are discussed in detail in the Federal Register notice for the proposed IHA and are not repeated here. The potential affected habitat on harbor seal haul-out was not discussed in the proposed IHA because NMFS was not aware of that issue at the time. An analysis of the potential effect on the removal of a harbor seal haul-out is provided below.

The harbor seal haul-out site that would be affected is a small craft dock located at the project site and was abandoned by the Navy when it vacated the Naval Air Station-Alameda in 1997. The unmaintained dock has been deteriorating slowly over the last 17 years and the deterioration has appeared to be accelerating in the last five years. Later in 2010, the portion connecting the floating dock to land broke off and sank, leaving remnant parts of the floating dock isolated from land. Since 2010, additional remnant parts of the marina have also been lost. During this period of time harbor seals have been opportunistically using the dock for haul-out purposes. At present, seals have been observed by local residents hauling out on the portion of the dock that is furthest from shore.

It is observed that on an average, about 10 to 20 harbor seals use the floating dock as haul-out periodically. Although during the spring of 2014, one pup was observed reared at the floating dock, the site is not a known breeding area for harbor seal. Because the dock has been in a gradual state of decay since the closure of the naval base and will likely continue to fall apart, the haul-out area on the dock provided for harbor seals is expected to decrease and eventually disappear.

Finally, several nearby haul-out sites are available in the Bay that are available to resident harbor seals in the area. These areas include the tip of Breakwater Island (1 mile from the WETA project site) and the haul-out at Yerba Buena Island (4 to 5 miles from the WETA project

site) which is identified as one of the five major haul-out sites for harbor seals in the San Francisco Bay (Gibble 2011).

Therefore, the removal of the remnant abandoned dock would have negligible impact to harbor seal habitat in the proposed WETA construction site.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

For WETA's proposed Central Bay Operations and Maintenance Facility Project, NMFS required the following mitigation measures to minimize the potential impacts to marine mammals in the Project vicinity. The primary purposes of these mitigation measures are to minimize sound levels from the activities, to monitor marine mammals within designated zones of influence corresponding to NMFS' current Level B harassment thresholds and, if marine mammals with the ZOI appear disturbed by the work activity, to initiate immediate shutdown or power down of the piling hammer, making it very unlikely potential injury or hearing impairment to marine mammals would occur and ensuring that Level B behavioral harassment of marine mammals would be reduced to the lowest level practicable.

Use of Noise Attenuation Devices

Noise attenuation systems (i.e., bubble curtains) will be used during all impact pile driving of steel piles to dampen the acoustic pressure and reduce the impact on marine mammals. By reducing underwater sound pressure levels at the source, bubble curtains would reduce the

area over which Level B harassment would occur, thereby potentially reducing the numbers of marine mammals affected. In addition, the bubble curtain system would reduce sound levels below the threshold for injury (Level A harassment), and thus eliminate the need for an exclusion zone for Level A harassment.

Time Restrictions

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

In addition, all in-water construction will be limited to the period between August 1 and November 30, 2016.

Establishment of Harassment Zones of Influence

Before the commencement of in-water pile driving activities, WETA shall establish Level B behavioral harassment zones of influence (ZOIs) where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 µPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively. The ZOIs delineate where Level B harassment would occur. Because of the relatively low source levels from vibratory pile driving and from impact pile driving with air bubble curtains, there will be no area where the noise level would exceed the threshold for Level A harassment for pinnipeds, which is 190 dB (rms) re 1 µPa. The modeled maximum isopleths for ZOIs are listed in Table 2.

Table 2. Modeled Level B harassment zones of influence for various pile driving activities

Pile Driving Methods	Pile Material and Size	Distance to 120 dB re 1 µPa (rms) (m)	Distance to 160 dB re 1 µPa (rms) (m)
Impact pile driving with air bubble curtain	30” epoxy coated steel piles	NA	250
	24” epoxy coated steel piles	NA	185
	18” epoxy coated steel piles	NA	93
Vibratory pile driving	18” plastic fender piles	2,154	NA

In addition, although Level A harassment and injury by noise are not expected to occur due to implementation of noise attenuation devices and vibratory pile driving, a minimum shutdown zone of 10 m will be established during all pile driving and removal activities, regardless of the estimated zone. These precautionary measures are intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

Once the underwater acoustic measurements are conducted during initial test pile driving, WETA shall adjust the sizes of the exclusion zones and ZOIs only if the measured exclusion zones and ZOIs are larger than modeled zones. These zones will be monitored as described under the Proposed Monitoring section below.

Soft Start

A "soft-start" technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures described below.

For vibratory hammers, the contractor will initiate the driving for 15 seconds at reduced energy, followed by a 1-minute waiting period. This procedure shall be repeated two additional times before continuous driving is started. This procedure would also apply to vibratory pile extraction.

For impact driving, an initial set of three strikes would be made by the hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets at 40 percent energy, with 1-minute waiting periods, before initiating continuous driving.

Shutdown Measures

WETA shall implement shutdown measures for pile driving or pile removal activities if a marine mammal is sighted within or is about to enter the 10 m exclusion zone.

In addition, WETA shall discontinue pile driving or pile removal activities if a marine mammal within a ZOI appears disturbed by the work activity. Work may not resume until the animal is seen to leave the ZOI or 30 minutes have passed since the disturbed animal was last sighted.

Furthermore, for in-water heavy machinery work with the potential to affect marine mammals (other than pile driving), if a marine mammal comes within 10 m, operations shall cease until the animal has left the shutdown zone or 15 minutes has passed. Heavy machinery work could include setting the pile and removal of the pile from the water column/substrate via a crane (i.e., dead pull).

Finally, if any marine mammal species not authorized for take are encountered during pile driving or removal and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 µPa (rms) for impact pile driving or greater than or equal to 120 dB re 1 µPa (rms) for vibratory driving or removal, then the Holder of this IHA must cease those activities prior to the animal entering the applicable Level B zone to avoid take. Activities cannot commence until the animal has left the Level B zone.

Mitigation Conclusions

NMFS has carefully evaluated the mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. WETA submitted a marine mammal monitoring plan as part of the IHA application. It can be found at http://www.nmfs.noaa.gov/pr/permits/incidental.htm. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

WETA shall employee NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Central Bay Operations and Maintenance Facility Project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. If a PSO observes a marine mammal within a ZOI that appears to be disturbed by the work activity, the PSO will notify the work crew to initiate shutdown measures.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (e.g., Zeiss, 10 x 42 power). Marine mammal visual monitoring shall be conducted from the best vantage point available, including the pier, breakwater, and adjacent docks within the harbor, to maintain an excellent view of the ZOIs and adjacent areas during the survey period. Monitors would be equipped with radios or cell phones for maintaining contact with work crews.

Data collection during marine mammal monitoring will consist of a count of all marine mammals by species, a description of behavior (if possible), location, direction of movement, type of construction that is occurring, time that pile replacement work begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as weather, visibility, temperature, tide level, current, and sea state would also be recorded.

Reporting Measures

WETA would be required to submit weekly monitoring reports to NMFS that summarize the monitoring results, construction activities, and environmental conditions.

A final monitoring report would be submitted to NMFS within 90 days after completion of the construction work. This report would detail the monitoring protocol, summarize the data

recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WETA would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WETA to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. WETA shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WETA finds an injured or dead marine mammal that is not in the vicinity of the construction area, WETA would report the same information as listed above to NMFS as soon as operationally feasible.

Estimated Take by Incidental Harassment

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].

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WETA's proposed Central Bay Operations and Maintenance Facility Project.

Currently, NMFS uses 120 dB re 1 µPa and 160 dB re 1 µPa at the received levels for the onset of Level B harassment from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 3 summarizes the current NMFS marine mammal take criteria.

Table 3. Current Acoustic Exposure Criteria for Non-explosive Sound Underwater

Criterion	**Criterion Definition**	**Threshold**
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS)	180 dB re 1 µPa (cetaceans) 190 dB re 1 µPa (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 µPa (rms)
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 µPa (rms)

As explained above, ZOIs will be established that encompass the areas where received underwater SPLs exceed the applicable thresholds for Level B harassment. There will not be a zone for Level A harassment in this case, because the bubble curtain system will keep all underwater noise below the threshold for Level A harassment.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the project area during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, this type of calculation is not applicable in this case, because the ZOI will be relatively small and there is no specific local animal density for harbor seals or California sea lions. Based on observational data, the maximum number of harbor seals observed along the closest breakwater near the project vicinity ranges from 10 to 20 individuals. Observational data on California sea lions are not available,

but they are generally less abundant than harbor seals; therefore, the number of harbor seals will be used to estimate impacts for both species.

While it is unlikely that 10 to 20 individuals would be present inside the ZOI at any one time, given the distance from the nearest haul-out site, as a worst-case, this analysis assumes that up to 20 individuals might be present.

For the Project, the total number of pile removal hours is estimated to not exceed 18 hours over 3 days, and the total number of pile driving hours is estimated to not exceed 60 hours over 10 days. Therefore, the estimated total number of days of activities that might impact marine mammals is 13 days. For the exposure estimate, it is assumed that the highest count of harbor seals observed, and the same number of California sea lions, will be foraging within the ZOI and be exposed multiple times during the Project.

The calculation for marine mammal exposures for this Project is estimated by:

Exposure estimate = N * (10 days of pile driving activity + 3 days of pile removal activity), where:

N = # of animals potentially present = 20.

This formula results in the following exposure estimate:

Exposure estimate = 20 animals * 13 days = 260 animals.

Therefore, WETA is requesting authorization for Level B acoustical harassment of up to 260 harbor seals and up to 260 California sea lions due to pile removal and driving. A summary of the take estimates and the proportions of the stocks potentially affected is provided in Table 4.

Table 4. Summary of potential marine mammal takes and percentages of stocks affected.

	Estimated Density	Estimated Take by Level B Harassment	Abundance of Stock	Percentage of Stock Potentially Affected	Population Trend
California sea lion	NA	260	396,750	0.06%	Stable
Harbor seal	NA	260	30,196	0.86%	Stable

Analysis and Determinations

Negligible Impact

Negligible impact is "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" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

WETA's proposed Central Bay Operations and Maintenance Facility Project would involve pile removal and pile driving activities. Elevated underwater noises are expected to be generated as a result of these activities; however, these noises are expected to result in no mortality or Level A harassment and limited, if any, Level B harassment of marine mammals. WETA would use noise attenuation devices (i.e., bubble curtains) during the impact pile driving, thus eliminating the potential for injury (including PTS) and TTS from impact driving. For vibratory pile removal and pile driving, noise levels are not expected to reach the level that may cause TTS, injury (including PTS), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment (including injury or PTS) or Level

B harassment in the form of TTS from being exposed to in-water pile removal and pile driving associated with WETA's construction project.

In addition, WETA's proposed activities are localized and of short duration. The entire project area is limited to WETA's Central Bay Operations and Maintenance Facility near Pier 3 in the City of Alameda. The entire Project would involve the removal of 35 existing concrete piles and installation of a total of 61 steel piles ranging from 18 inches to 30 inches in diameter and 24 plastic piles of 18-inch diameter. The duration for pile removal is expected to be fewer than three days and the duration for pile driving is expected to be fewer than 10 days, for a total of 13 days of activity. The duration for removing each pile would be about 30 minutes, and the duration for driving each pile would be about 10 to 30 minutes for impact steel pile driving and about 10 to 20 minutes for plastic vibratory pile driving. These low-intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Moreover, the proposed mitigation and monitoring measures are expected to reduce potential exposures and behavioral modifications even further. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Central Bay Operations and Maintenance Project is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival.

The Project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the "Anticipated Effects on Marine Mammal Habitat" section in the Federal Register notice (79 FR 55479; September 17, 2014). The project activities

would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range, but because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from WETA's Central Bay Operations and Maintenance Facility Project will have a negligible impact on the affected marine mammal species or stocks.

Small Number

Based on analyses provided above, it is estimated that approximately 260 California sea lions and 260 Pacific harbor seals could be exposed to received noise levels that could cause Level B behavioral harassment from the proposed construction work at the WETA Central Bay Operations and Maintenance Facility in Alameda, CA. These numbers represent approximately 0.06% and 0.86% of the stocks and populations of these species that could be affected by Level B behavioral harassment, respectively (see Table 4 above), which are small percentages relative to the total populations of the affected species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, which are expected to reduce the number of marine mammals potentially affected by the proposed action, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area, and thus no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from WETA's Central Bay Operations and Maintenance Facility project in Alameda, California. Therefore, A Finding of No Significant Impact (FONSI) was issued for this action. A copy of the EA and FONSI is available upon request

Authorization

NMFS has issued an IHA to USCG for the potential harassment of small numbers of marine mammal species incidental to its waterfront repair project at Station Monterey in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 19, 2015.

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