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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD330

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Breakwater Replacement Project in Eastport, Maine

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

ACTION: Notice; revision of an incidental harassment authorization.

SUMMARY: Notice is hereby given that we have revised an incidental harassment authorization (IHA) issued to the Maine Department of Transportation (ME DOT) to incidentally harass, by Level B harassment only, small numbers of four species of marine mammals during construction activities associated with a breakwater replacement project in Eastport, Maine. The project has been delayed and the effective dates revised accordingly.

DATES: This authorization is now effective from July 20, 2015, through July 19, 2016.

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

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2014, NMFS received an application from ME DOT requesting an IHA for the take, by Level B harassment, of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harbor porpoises (*Phocoena phocoena*), and Atlantic white-sided

dolphins (*Lagenorhynchus acutus*) incidental to in-water construction activities in Eastport, Maine. On July 31, 2014, NMFS published a **Federal Register** notice (FR 79 44407) for the proposed IHA, and subsequently published final notice of our issuance of the IHA on October 1, 2014 (79 FR 59247), effective from October 1, 2014, through September 30, 2015. In June 2015, ME DOT informed NMFS that no work had occurred relevant to the IHA specified activity due to difficulties in developing a passive acoustic monitoring plan for sound source verification of test pile driving. Accordingly, ME DOT requested that NMFS revise the effective date of the IHA to a one-year period beginning on July 20, 2015, to accommodate the delayed schedule, with no other changes.

Summary of the Activity

The proposed Eastport breakwater replacement project will replace an open pier that is supported by 151 piles, consisting of steel pipe piles, reinforced concrete pile caps, and a pre-stressed plank deck with structural overlay. The proposed approach pier will be 40 ft by 300 ft and the proposed main pier section that would be parallel to the shoreline will be 50 ft by 400 ft.

The replacement pier will consist of two different sections. The approach pier will be replaced in kind by placing fill inside of a sheet pile enclosure, supported by driven piles. The approach section will consist of sheet piles that are driven just outside of the existing sheet piles. The sheet piles can be installed by use of a vibratory hammer only. The main pier, fender system, and wave fence system will be pile supported with piles ranging from 16 inch – 36 inch diameter pipe piles. These piles will be driven with a vibratory hammer to a point and must be seated with an impact hammer to ensure stability.

The vibratory hammer will drive the pile by applying a rapidly alternating force to the pile by rotating eccentric weights resulting in a downward vibratory force on the pile. The

vibratory hammer will be attached to the pile head with a clamp. The vertical vibration in the pile functions by disturbing or liquefying the soil next to the pile, causing the soil particles to lose their frictional grip on the pile. The pile moves downward under its own weight, plus the weight of the hammer. It takes approximately one to three minutes to drive one pile. An impact hammer will be used to ensure the piles are embedded deep enough into the substrate to remain stable for the life of the pier. The impact hammer works by dropping a mass on top of the pile repeatedly to drive it into the substrate. Diesel combustion is used to push the mass upwards and allow it to fall onto the pile again to drive it.

Findings

Marine Mammal Protection Act (MMPA) – As required by the MMPA, for the original IHA, we determined that (1) the required mitigation measures are sufficient to reduce the effects of the specified activities to the level of least practicable impact; (2) the authorized takes will have a negligible impact on the affected marine mammal species; (3) the authorized takes represent small numbers relative to the affected stock abundances; and (4) the ME DOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action. No substantive changes have occurred in the interim.

National Environmental Policy Act (NEPA) – In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500-1508), and NOAA Administrative Order 216-6, NMFS prepared an Environmental Assessment (EA) to consider the environmental impacts of issuance of a one-year IHA. A Finding of No Significant Impact was signed on September 24, 2014. No substantive changes have occurred in the interim.

Endangered Species Act (ESA) – No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS determined that a section 7 consultation under the ESA is not required. No substantive changes have occurred in the interim.

Summary of the Revision

Construction activities have been delayed for the project due to difficulties in developing a passive acoustic monitoring plan. No in-water work has occurred, including all aspects of the specified activity considered in our issuance of the IHA. The original IHA issued is a one-year IHA with no consideration of seasonality in timing any component of the specified activity. Therefore, shifting the effective dates of the IHA by approximately ten months to accommodate the ME DOT's delayed schedule for this project has no effect on our analysis of project impacts and does not affect our findings. No new information is available that would substantively affect our analyses under the MMPA, NEPA, or ESA. All mitigation, monitoring, and reporting measures described in our notice of issuance of the IHA remain in effect. The species for which take was authorized and the numbers of incidents of take authorized are unchanged.

As a result of the foregoing, we have revised the IHA issued to the ME DOT to conduct the specified activities in Eastport, Maine. Originally valid for one year, from October 1, 2014, through September 30, 2015, the IHA now becomes effective on July 20, 2015, and is valid for one year, until July 19, 2016.

Dated: July 29, 2015.

Perry Gayaldo,
Deputy Director,
Office of Protected Resources,
National Marine Fisheries Service.

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