



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE252**

**Takes of Marine Mammals Incidental to Specified Activities; Rehabilitation of the Jetty System at the Mouth of the Columbia River, Washington and Oregon**

**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 U.S. Army Corps of Engineers, Portland District (Corps) for authorization to take marine mammals incidental to the rehabilitation of the jetty system at the mouth of the Columbia River (MCR) including the North Jetty, South Jetty, and Jetty A. The Corps is requesting a Letter of Authorization (LOA) for pile installation and removal associated with construction of temporary offloading facilities at the North Jetty, South Jetty, and Jetty A over the course of 5 years; approximately September 2017 through August 2022. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Corps' request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Corps' 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 Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Pauline@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (e.g., name, address) 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:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

A copy of the Corps' application may be obtained by writing to the address specified above (see **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at:

*http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*

## **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 by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment (which is defined to include behavioral harassment and injury), serious injury, death, or a combination thereof, requires that regulations be promulgated for the specific activity. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The proposed incidental take authorization and establishment of prescriptions through either specific regulations or an IHA requires notice and opportunity for public comment.

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, section 3(18) of 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].”

Activities such as those described in the application (*e.g.*, pile driving) may result in the disturbance of marine mammals through disruption of behavioral patterns

### **Summary of Request**

On February 13, 2015, NMFS received an application for a single multi-year project for the taking of marine mammals incidental to the rehabilitation of the North Jetty, South Jetty, and Jetty A at the MCR. NMFS issued an incidental harassment authorization (IHA) for the first year of the project on August 31, 2015 (80 FR 53777 September 8, 2015) allowing the take of specified marine mammals for work associated with the reconstruction of Jetty A only. The IHA is valid from May 1, 2016 through April 30, 2017. The Corps is seeking an LOA for this same project that would cover in-water work associated with continuation of Jetty A reconstruction as well as reconstruction of the North Jetty and South Jetty. The Corps has requested regulations to be effective for the period from approximately summer of 2017 through 2022. The Corps requested authorization to take marine mammals by Level B harassment only: killer whale (*Orcinus orca*), Steller sea lion (*Eumatopius jubatus*), gray whale (*Eschrichtius robustus*), harbor

porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), and harbor seal (*Phoca vitulina richardii*).

### **Specified Activities**

The Corps is proposing to conduct monitoring actions, repairs, and rehabilitation of the three rubble-mound jetty structures at the MCR. The three structures are referred to as North Jetty, South Jetty, and Jetty A. Initial work on Jetty A will be covered by an IHA which has already been issued. The Corps is requesting a LOA for remaining pile repairs and removal actions at Jetty A, for pile installation and removal at North Jetty, and for pile installation and removal at South Jetty. Pile installation and removal activities are required as part of the construction of four temporary barge offloading facilities. These facilities combined will require up to 96 piles with a maximum diameter of 24-inches and up to 373 sections of Z-piles to retain rock fill. They will be installed via vibratory installation. A full description of the activities proposed by the Corps is described in the application.

### **Information Sought**

Interested persons may submit information, suggestions, and comments concerning the Corps' request (see **ADDRESSES**). All information, suggestions, and comments related to The Corps' request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Corps will be considered by NMFS in developing, if appropriate, regulations governing the issuance of letters of authorization.

Dated: October 20, 2015.

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

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