



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 the Elliot 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 Elliot Bay Seawall Project (EBSP).

DATES: Effective from October 22, 2015, through August 31, 2016.

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: Zach Hughes, 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 or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review. Under the MMPA, the term “take” means 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 Elliot Bay for the EBSP, 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 EBSP. Pursuant to those regulations, NMFS first issued an LOA, effective from October 22, 2013, through October 21, 2014, and a second LOA, effective from October 22, 2014, through October 21, 2015. SDOT conducted activities as described, implemented the required mitigation methods, and conducted the required monitoring.

Monitoring Reports

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 for the 2014-2015 Letter of Authorization, by Level B harassment only, exceeded the annually authorized level. Please see the monitoring report at <http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm> for more detail. This resulted in part because of an error in our assumptions relating to the proposed take estimates in the original rule, i.e., the number of California sea lions regularly hauling out on buoys in Elliot Bay. Based on our review of monitoring to date we plan to revise future take estimates by assuming an estimated daily exposure of up to 7 California sea lions (as compared with 5 assumed in regulations).

Because this revision of the estimated number of California sea lions constitutes less than 0.1 percent of the population for California sea lions, and is the same kind of take anticipated in the regulations, it remains consistent with the determinations of negligible impact and small numbers, and our subsistence findings for the specified activity and remaining years of the issued regulations for the EBSP.

Authorization

NMFS has issued an LOA to SDOT authorizing the Level B harassment of marine mammals incidental to pile driving activities associated with the EBSP at Seattle, WA. 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 reports that verified 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 the LOA will have a negligible impact on the marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses. No injury, serious injury, or mortality of the affected species is anticipated.

Dated: October 28, 2015.

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

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