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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF529

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Waterfront Construction

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

ACTION: Notice of issuance of 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 U.S. Navy (Navy) for the take of marine mammals incidental to waterfront construction activities at Naval Submarine Base Kings Bay, Georgia.

DATES: Effective from July 12, 2017, through July 11, 2022.

ADDRESSES: The LOA and supporting documentation are available online at:

www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. In case of problems accessing these documents, please call the contact listed below (see **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) 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 June 7, 2017, we issued a final rule upon request from the Navy for authorization to take marine mammals incidental to waterfront construction activities (82 FR 26360). The Navy

plans to repair in-water structures at NSB Kings Bay, as well as to construct new facilities and modify existing facilities. These repairs, upgrades, and new construction would include use of impact and vibratory pile driving, including installation and removal of steel, concrete, composite, and timber piles. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Only the bottlenose dolphin (*Tursiops truncatus truncatus*) is expected to be present. The regulations are valid for five years, from July 12, 2017, through July 11, 2022.

Authorization

We have issued a LOA to Navy authorizing the take of marine mammals incidental to waterfront construction activities, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) required monitoring of the waterfront construction areas to detect the presence of marine mammals before beginning construction activities; (2) shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and (3) soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

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.

Dated: August 15, 2017.

Cathryn E. Tortorici,
Acting Deputy Director, Office of Protected Resources,
National Marine Fisheries Service.

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