

transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation, would result in Level B harassment only of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals; and would have a negligible impact on the affected species. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this proposed action. Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ULA for the Delta IV EELV Program, provided that the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 27, 2008.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XI68

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an authorization to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OB) in California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization

to CALTRANS to incidentally take, by harassment, small numbers of these species of pinnipeds and cetaceans during the next 12 months.

DATES: Comments and information must be received no later than August 4, 2008.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. The mailbox address for providing email comments is PR1.0648-XI68@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the 2001 application, the 2008 renewal request, the January 2005 Marine Mammal and Acoustic Monitoring report, and the August 2006 Hydroacoustic Measurements report may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713-2289, ext 137, or Monica DeAngelis, NMFS, (562) 980-3232.

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, the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking 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."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by 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].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 3, 2008, CALTRANS submitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OB, in San Francisco Bay (SFB), California. An IHA was issued to CALTRANS for this activity on May 2, 2007 and it expired on May 1, 2008 (72 FR 25748, May 7, 2007). However, no pile driving activities were conducted during that period. In the March 3 request, CALTRANS states that it has scheduled pile driving for 2008 - 2009, which CALTRANS intended to begin in June 2008. A detailed description of the SF-OB project was provided in the November 14, 2003 (68 FR 64595) **Federal Register** notice of IHA and is not repeated here. Please refer to that **Federal Register** notice.

On June 2, 2008, CALTRANS provided an update on the proposed pile driving activities planned for the 2008 season. In its update, CALTRANS states that pile driving for the 2008 construction would be driving the 42 - 48 in (0.17 - 0.19 m) diameter temporary piles, as opposed to the 5.9 - 8.2 ft (1.8 - 2.5 m) diameter permanent piles. Therefore, the noise from pile driving of these temporary piles would be far less than from previous pile driving

activities. In addition, CALTRANS indicates that deployment of air bubble curtain would not be feasible for the driving of these smaller temporary piles due to the complexity of the driving frames.

Description of the Marine Mammals Potentially Affected by the Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2007), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2007.pdf>. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBG area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF-OBG area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Based on airborne noise levels measured and on-site monitoring conducted during 2004 under the previous IHA, noise levels from the East Span project did not result in the harassment of harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS' marine mammal and

acoustic monitoring report for the same activity (CALTRANS' 2005).

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice and in CALTRANS' June 2004, January 2005 annual monitoring reports, and marine mammal observation memoranda between February and September, 2006, the proposed construction would result in harassment of only small numbers of harbor seals and would not result in more than a negligible impact on marine mammal stocks and their habitat. This was achieved by implementing a variety of monitoring and mitigation measures including marine mammal monitoring before and during pile driving, establishing safety zones, ramping up pile driving, and deploying air bubble curtain to attenuate underwater pile driving sound. However, with no air bubble curtain being deployed for the proposed pile driving of smaller temporary piles, additional cautions must be exercised to ensure that no marine mammals will be taken by Level A (i.e., injury) harassment. Based on the pinniped distribution within the proposed project area and prior monitoring reports, NMFS estimates that up to 5 harbor seals and 5 California sea lions could be taken by Level B behavioral harassment as a result of the proposed temporary pile driving project.

Short-term impacts to habitat may include minimal disturbance of the sediment where the channels are dredged for barge access and where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Proposed Mitigation

NMFS proposes the following mitigation measures for the planned 2008 SF-OBG planned construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable.

Establishment of Safety/Buffer Zones

CALTRANS indicated that for the planned 2008 SF-OBG construction pile driving activities, an air bubble curtain cannot be deployed due to the complexity of the driving frame. Therefore, proposed shutdown safety zones corresponding to where a marine mammal could be injured would be established based on empirical field

measurements of pile driving sound levels.

These safety zones shall include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 microPa rms (impulse) for pinnipeds and 180 dB re 1 microPa rms (impulse) for gray whales and harbor porpoises, and be monitored at all times when pile driving is underway.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995). However, due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals at all times.

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment (i.e., injury) through marine mammal observers monitoring a 190-dB safety zone for pinnipeds and 180-dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS will also "soft start" the hammer prior to operating at full capacity. CALTRANS typically implements a "soft start" with several initial hammer strikes at less than full capacity (i.e., approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor will initiate pile driving hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance with Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

Proposed Monitoring

The following monitoring measures were required under the 2007 - 2008 IHA. Unless, as noted, the work has been completed, NMFS proposes to continue those monitoring measures under a new IHA (if issued).

Visual Observations

The area-wide baseline monitoring and the aerial photo survey to estimate the fraction of pinnipeds that might be missed by visual monitoring have been completed under the current IHA and do not need to be continued.

Safety zone monitoring will be conducted during driving of all open-water, permanent piles without

cofferdams and with cofferdams when underwater SPLs reach 190 dB RMS or greater. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team will be required for the safety zones around each pile driving site, so that multiple teams will be required if pile driving is occurring at multiple locations at the same time. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Most likely observers will conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OB) are not practical. Pile driving will not begin until the safety zones are clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation). Monitoring will continue through the pile driving period and will end approximately 30 minutes after pile driving has been completed. Biological observations will be made using binoculars during daylight hours.

In addition to monitoring from boats, during open-water pile driving, monitoring at one control site (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e. Mowry Slough) will be designated and monitored for comparison. Monitoring will be conducted twice a week at the control site whenever open-water pile driving is being conducted. Data on all observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals will be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, see 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals

under each disturbance reaction will be recorded, as well as the time when seals re-haul after a flush.

Acoustical Observations

Airborne noise level measurements have been completed and underwater environmental noise levels will continue to be measured as part of the East Span Project. The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for cetaceans. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given open-water pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a distance of 100 m (328 ft) from the pile driving. Sound measurements will be taken at the reference location at two depths (a depth near the mid-water column and a depth near the bottom of the water column but at least 1 m (3 ft) above the bottom) during the driving of the last half (deepest pile segment) for any given pile. Two additional in-water spot measurements will be conducted at appropriate depths (near mid water column), generally 500 m (1,640 ft) in two directions either west, east, south or north of the pile driving site will be conducted at the same two depths as the reference location measurements. In cases where such measurements cannot be obtained due to obstruction by land mass, structures or navigational hazards, measurements will be conducted at alternate spot measurement locations. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa rms (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Proposed Reporting

Under previous IHAs, CALTRANS submitted weekly marine mammal monitoring reports for the time when pile driving was commenced. In August 2006, CALTRANS submitted its Hydroacoustic Measurement at Piers T1 and E2 report. This report is available

by contacting NMFS (see **ADDRESSES**) or on the Web at <http://biomitigation.org>.

Under the proposed IHA, coordination with NMFS will occur on a weekly basis. During periods with open-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at <http://biomitigation.org>. These weekly reports will include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS proposes to provide NMFS' Southwest Regional Administrator with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS Southwest Regional Administrator within 30 days, the draft final report will be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF-OB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS is reviewing additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles, and will make a final NEPA determination before issuing a final IHA. A copy of the EA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OB in California. Anadromous salmonids are the only listed species which may be affected by the project. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OB is not likely to jeopardize the continued existence of listed anadromous

salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected.

NMFS proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. The effects of the activities on listed salmonids were analyzed during consultation between the FHWA and NMFS, and the underlying action has not changed from that considered in the consultation. Therefore, the effects discussion contained in the Biological Opinion issued to the FHWA on October 30, 2001, pertains also to this action. NMFS has determined that issuance of an IHA for this activity does not lead to any effects on listed species apart from those that were considered in the consultation on FHWA's action.

Preliminary Determinations

For the reasons discussed in this document and in previously identified supporting documents, NMFS has preliminarily determined that the impact of pile driving and other activities associated with construction of the East Span Project should result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoises, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. The activity will not have an unmitigable adverse impact on subsistence uses of marine mammals described in MMPA section 101(a)(5)(D)(i)(II).

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor

seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**). Prior to submitting comments, NMFS recommends reviewers of this document read NMFS' November 14, 2003 (68 FR 64595) **Federal Register** notice on the SF-OB construction project, especially responses to comments made previously, as NMFS does not intend to address these issues further without the submission of additional relevant scientific information.

Dated: June 27, 2008.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XI50

Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Navy Research, Development, Test, and Evaluation Activities Conducted within the Naval Surface Warfare Center Keyport Range Complex Extension

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

ACTION: Notice; receipt of applications for letters of authorization; request for comments and information.

SUMMARY: NMFS has received requests from the U.S. Navy (Navy) for authorizations for the take of marine mammals incidental to Navy research, development, test, and evaluation (RDT&E) activities within the Naval Sea Systems Command (NAVSEA) Naval Undersea Warfare Center (NUWC)