



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

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF299**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rehabilitation of the Jetty System at the Mouth of the Columbia River**

**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 US Army Corps of Engineers (Corps) for the take of marine mammals incidental to the rehabilitation of the Jetty System at the Mouth of the Columbia River (MCR).

**DATES:** Effective from May 1, 2017, through April 30, 2022.

**ADDRESSES:** The LOA and supporting documentation is available online at:

[www.nmfs.noaa.gov/pr/permits/incidental/construction.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm). In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, 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 12, 2015, NMFS received an adequate and complete application from the Corps for the taking of marine mammals incidental to the rehabilitation of the Jetty System at the MCR in Washington and Oregon. On August 25, 2016 NMFS published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the Corps

request for thirty days (81 FR 58443). A corrected notice and extension of the public comment period was published in the **Federal Register** on September 6, 2016 (81 FR 61160). The final rule was published in the **Federal Register** on February 10, 2017 (82 FR 10286). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the rehabilitation of the Jetty System at the MCR in Washington and Oregon.

The purpose of the project is to rehabilitate the MCR jetty system, which has degraded over time. Rehabilitation of the jetty system will require vibratory pile driving for installation and subsequent removal of three off-loading facilities at the three MCR jetties. The pile driving and removal portion of the project will require approximately 49 days of in-water pile driving and removal. Vibratory pile driving and removal activities will generate underwater noise levels that are anticipated to result in Level B harassment of marine mammals. Pedestrian surveys of the jetty system will also occur which are anticipated to result in disturbance of hauled out pinnipeds. The Corps is authorized to take individuals of seven species of marine mammals by Level B harassment.

### **Authorization**

We have issued an LOA to the Corps authorizing the take of marine mammals incidental to construction activities and pedestrian surveys as described above. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) establishment and visual monitoring of shutdown and disturbance zones; (2) vessel-based monitoring of offshore waters; (3) shut-down of all pile installation, removal, or maintenance activities if any killer whales are observed within the Zone of Influence (ZOI) between May 1 and July 1 to eliminate potential for take of southern resident killer whales; and (4)

implementation of a hydroacoustic monitoring plan to ensure that shutdown zones and ZOIs have been delineated appropriately. The Corps will submit annual marine mammal monitoring reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs 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: March 17, 2017.

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National Marine Fisheries Service.

[FR Doc. 2017-05842 Filed: 3/23/2017 8:45 am; Publication Date: 3/24/2017]