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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG131**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Bravo Wharf Recapitalization Project**

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) for the take, by Level B harassment only, of bottlenose dolphins (*Tursiops truncatus*), incidental to the Bravo Wharf Recapitalization Project at Bravo Wharf, Naval Station Mayport, Florida.

**DATES:** The IHA is valid from May 14, 2018 through May 13, 2019.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8438.

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) 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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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).

### **National Environmental Policy Act**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500-1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the Bravo Wharf

recapitalization project. NMFS made the Navy's EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216-6, NMFS has reviewed the Navy's EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) in July, 2016. The 2016 NEPA documents are available at <https://www.fisheries.noaa.gov/node/23111>. Since the IHA covers a subset of the same work covered in a former IHA, NMFS is relying on this same EA and FONSI document.

### **History of Request**

On July 21, 2015, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals incidental to pile driving (predominantly vibratory pile driving, with a small amount of impact pile driving as a contingency plan in case of difficult piles) in association with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida. A final version of the application, which we deemed adequate and complete, was submitted on November 17, 2015. We published a notice of a proposed IHA and request for comments on December 7, 2015 (80 FR 75978), and subsequently published final notice of our issuance of the IHA on August 9, 2016 (81 FR 52637). In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA (effective dates originally December 1, 2016 through November 30, 2017). The specified activities were, and are, expected to result in the take of individuals from four stocks of bottlenose dolphins.

On January 23, 2017, the Navy informed NMFS that no work had been performed relevant to the specified activity considered in the MMPA analysis. On February 22, 2017, we

published a notice of a revision of the IHA (82 FR 11344), revising the effective authorization dates from March 13, 2017, through March 12, 2018.

On December 5, 2017, the Navy informed NMFS that construction had not yet begun on one of two construction phases authorized under the revised IHA. The Navy attributed delays in progress and inaccuracies in original construction planning due to a combination of: (1) Rain delays, hurricane preparation, and Hurricane Irma, (2) Inefficiencies by the contractor, and (3) Activities influenced by tides, originally unaccounted for in the schedule.

On January 9, 2018, the Navy formally requested that NMFS issue an IHA for one year from May 14, 2018, to May 13, 2019 in order to complete a subset of the construction activity previously covered by the 2017 IHA. We issued a notice of proposed IHA on April 4, 2018 (83 FR 1443) primarily referring back to our previous documents and analysis but fully describing updates to acoustic analysis, take numbers (due to decreased amount of work), and stock abundances.

### **Comments and Responses**

A notice of NMFS' proposal to issue an IHA to the Navy for the Bravo Wharf Recapitalization Project was published in the *Federal Register* on April 4, 2018 (83 FR 14443). During the 30-day public comment period, we received one letter, dated April 30, 2018, from the Marine Mammal Commission (Commission). The Commission concurs with NMFS's preliminary findings and recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

### **Description of the Proposed Activity and Anticipated Impacts**

The 2017 IHA covered the installation of 880 single sheet piles installed with a vibratory hammer over 110 days and 20 days of contingency impact driving, for a total of up to 130

construction days. The 2017 IHA authorized the Level B harassment of 370 bottlenose dolphins (330 takes from vibratory pile driving, 40 from impact pile driving), which could occur to any of the four stocks in the area. The Navy did not complete that work, and requested that a second IHA cover the installation of the remaining 356 steel sheet piles over the course of 43 pile-driving days, plus 10 contingency impact driving days, for a total of 53 days. Other documents that fully describe the project include the *Federal Register* notice of the issuance of the 2017 IHA for the Navy's Bravo Wharf (82 FR 11344, February 22, 2017), the Navy's application, the *Federal Register* notice of the proposed IHA (81 FR 52637; December 1, 2016), and all associated references and documents.

*Detailed Description of the Action*—A detailed description of the proposed vibratory and impact pile driving activities at Bravo Wharf is found in the aforementioned documents. The location, timing (*e.g.*, lack of seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous notices, except that only a subset of the number of piles are proposed to be driven under the recently issued IHA (356 piles over 53 days, versus 880 over 130 days).

*Description of Marine Mammals*—A description of the marine mammals in the area of the activities is also found in the aforementioned documents, which remains applicable to this IHA except for new information in the 2016 stock assessment reports where abundance for the Northern Florida coastal stock was reduced from 1,219 to 877 individuals and southern migratory coastal stock was decreased from 9,137 to 3,751 individuals.

*Potential Effects on Marine Mammals*—A description of the potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects.

*Estimated Take*—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in these previous documents. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. One input into the take estimate, the source levels, was changed to reflect newer information. The original IHA reflected a vibratory pile driving source level of 151 decibels (dB) root mean square (rms), but more recent measurements (measurements of vibratory driving of steel sheet piles during the first year of construction at nearby Wharf C-2 at Naval Station Mayport (DoN 2015) support a higher source level (156 dB rms). The impact pile driving source level of was also corrected from 189 dB rms to 190 rms (CalTrans, 2015). The Navy modified their take estimates to reflect these newer values, which NMFS used for issuance of another IHA at Bravo Wharf (83 FR 9287; March 5, 2018). Using the same take estimate methodology described in the 2017 IHA and the updated source levels (which extends the vibratory pile driving Level B harassment isopleth from 1,166 meters (m) to 2,512 m, and the impact pile driving Level B harassment isopleth from 858 m to 1000 m), we are authorizing 242 Level B harassment takes of bottlenose dolphins during vibratory driving and 22 during impact driving, for a total of 264 requested Level B bottlenose dolphin takes. There are four stocks of bottlenose dolphins to which takes could accrue: Jacksonville Estuarine System; Western North Atlantic, northern Florida coastal; Western North Atlantic, offshore; and Western North Atlantic, southern migratory coastal. No Level A take is authorized.

*Description of Proposed Mitigation, Monitoring and Reporting Measures*—A description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are identical in this proposed IHA and provided in our April 4, 2018 notice of proposed IHA. In summary, mitigation includes soft start techniques, as well as a 15-m shutdown zone for

vibratory pile driving and 40-m shutdown for impact pile driving. Two trained observers will monitor to implement shutdowns and collect information.

On January 9, 2018, the Navy submitted a monitoring report for construction that had been completed under the 2017 IHA. The Navy complied with all mitigation, monitoring, and reporting protocols. Recorded takes were below the number authorized for the corresponding amount of work. The monitoring report can be viewed on NMFS's website at <https://www.fisheries.noaa.gov/node/23111>.

### **Determinations**

The Navy proposes to conduct a subset of activities identical to those covered in the previous 2017 IHA. As described above, the number of estimated takes of the same stocks of bottlenose dolphins (Jacksonville Estuarine System; northern Florida coastal; Western North Atlantic, offshore; and southern migratory coastal) is significantly lower than the 330 Level B harassment takes from vibratory pile driving and 40 Level B harassment takes from impact pile driving that were found to meet the negligible impact and small numbers standards and authorized under the 2017 IHA. The IHA includes identical required mitigation, monitoring, and reporting measures as the 2017 IHA (with the exception of harassment distances, as described above), and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4)

the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

### **Authorization**

As a result of these determinations, NMFS has issued an IHA to the Navy for the harassment of small numbers of bottlenose dolphins incidental to construction activities related to the Bravo Wharf Recapitalization Project, Naval Base Mayport, Florida, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 30, 2018.

Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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