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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF591

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Construction at Naval Weapons Station Seal Beach, California

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take small numbers of marine mammals incidental to conducting construction activities related to construction of an ammunition pier and turning basin at Naval Weapons Station Seal Beach, California, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries

Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. In case of problems accessing these documents, please call the contact listed above.

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 (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).

Summary of Request

On September 10, 2019, NMFS received an adequate and complete application from the Navy requesting authorization for take of marine mammals incidental to construction activities related to construction of an ammunition pier and turning basin at Naval Weapons Station Seal Beach, California. The requested regulations would be valid for five years, from 2020 through

2025. The Navy plans to conduct necessary work, including impact and vibratory pile driving, to demolish the old pier and construct a new one. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level B harassment only. Therefore, the Navy requests authorization to incidentally take marine mammals.

Specified Activities

Naval Weapons Station Seal Beach was commissioned in 1944 as a Naval Ammunition and Net Depot, and the existing wharf was rebuilt in 1953. This facility is the Navy's primary weapons station on the U.S. West Coast. The existing wharf is past its design life, not in compliance with modern earthquake codes, and presents safety and security concerns due to the proximity of naval munitions operations to civilian small boat traffic and the Pacific Coast Highway. Therefore, replacement of the wharf is planned, and is expected to require removal of approximately 100 piles and installation via impact hammer of approximately 900 new concrete piles. The work is expected to require approximately 474 days over the 5-year period. Bottlenose dolphins, harbor seals, California sea lions, and common dolphins have been observed in the area.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: September 11, 2019.

Catherine G. Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

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