



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XR073]**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Portsmouth Naval Shipyard Dry Dock 1 Modification and Expansion**

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

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

**SUMMARY:** NMFS has received a request from the United States Navy for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of five species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Portsmouth Naval Shipyard Dry Dock 1 modification and expansion in Kittery, Maine. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from October 1, 2019, through September 30, 2020. The Navy has requested re-issuance with new effective dates of March 1, 2020, through February 28, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second IHA to cover the incidental take analyzed and authorized in the initial IHA.

**DATES:** This authorization is effective from March 1, 2020, through February 28, 2021.

**ADDRESSES:** An electronic copy of the final 2019 IHA previously issued to the Navy, the Navy's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-dry-dock-expansion-project-portsmouth-naval-shipyard*. 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 Marine Mammal Protection Act (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 May 28, 2019, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Portsmouth Naval Shipyard Dry Dock 1 modification and expansion project (84 FR 24476). The effective dates of that IHA were October 1, 2019, through September 30, 2020. On September 30, 2019, the Navy informed NMFS that the project was delayed. None of the work identified in the initial IHA (e.g., pile driving and removal) has occurred. The Navy submitted a request for a new identical IHA that would be effective from March 1, 2020 through February 28, 2021, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, re-issuance of the IHA is appropriate.

### **Summary of Specified Activity and Anticipated Impacts**

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of the Navy's construction project is to modernize and maximize dry dock capabilities for performing current and future missions efficiently and with maximum flexibility. The need for the proposed action is to modify and expand Dry Dock 1 at the Portsmouth Naval Shipyard by constructing two new dry docking positions capable of servicing Virginia class submarines within the super flood basin of the dry dock. The location, timing, and nature of the activities, including the types of equipment planned for use, are within scope of those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), hooded seal (*Cystophora cristata*), and harp seal (*Pagophilus groenlandicus*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the Federal Register notice of the issuance of the initial 2019 IHA for the Navy's construction work (84 FR 24476), the Navy's application, the Federal Register notice of the proposed IHA (84 FR 13252), and all associated references and documents.

## **Determinations**

The Navy will conduct activities as analyzed in the initial 2019 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2020 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, 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.

## **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the

quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

### **Endangered Species Act (ESA)**

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.

However, 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**

NMFS has issued an IHA to the Navy for in-water construction activities associated with the specified activity from March 1, 2020, through February 28, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2019 IHA are incorporated.

**Dated:** December 3, 2019.

**Donna S. Wieting,**

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