



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

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XA521]**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Hampton Roads Bridge Tunnel Expansion Project in Norfolk, Virginia**

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

**ACTION:** Notice; receipt of application; request for comments.

**SUMMARY:** NMFS has received a request from the Hampton Roads Connector Partners (HRCP) for authorization to take small numbers of marine mammals incidental to pile driving and removal activities at the Hampton Roads Bridge Tunnel Expansion Project (HRBT) in Norfolk, Virginia 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 HRCP'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 HRCP'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.Pauline@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 online at

*<https://www.fisheries.noaa.gov/node/23111>* 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:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of HRCP's application may be obtained online at *<https://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 incidental take authorization 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 November 19, 2019, NMFS received application from HRCP requesting authorization for take of marine mammals incidental to construction activities related to a

major road transport infrastructure project along the existing I-64 highway in Virginia, consisting of roadway improvements, trestle bridges, and bored tunnels crossing Hampton Roads between Norfolk and Hampton, Virginia. After the HRCF responded to our questions, we determined the application was adequate and complete on September 29, 2020. The requested regulations would be valid for 5 years, from February 2021 through January 2026. HRCF plans to conduct necessary work, including pile installation and removal. Pile installation methods will include impact and vibratory driving, jetting, and drilling with a down-the-hole hammer. Pile removal techniques for temporary piles will include vibratory pile removal or cutting three feet below the mudline. The proposed action may incidentally expose marine mammals occurring in the vicinity to example elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment,. Therefore, the HRCF requests authorization to incidentally take marine mammals.

### **Specified Activities**

The Hampton Roads Bridge Tunnel project is a major road transport infrastructure project along the existing I-64 highway in Virginia, consisting of roadway improvements, trestle bridges, and bored tunnels crossing Hampton Roads between Norfolk and Hampton. The proposed project will address severe traffic congestion at the existing HRBT crossing by increasing capacity The proposed project will include widening I-64 to create an eight-lane facility with a consistent six-lanes between the I-64/I-664 and I-64/I- 564 Interchange, which could expand to eight-lanes during peak travel periods with the use of drivable shoulder lanes within the project limits. The proposed project will include the construction of two new two-lane tunnels, expansion of

the existing portal islands, and full replacement of the existing North and South bridge-trestles. An estimated 6,746 piles would be installed and 3,856 piles would be removed over 5 years. Pile installation and removal activities would take place for approximately 312 days per year based on a 6-day work week. Bottlenose dolphins (*Tursiops spp.*), humpback whales (*Megaptera novaeangliae*), harbor porpoises (*Phocoena phocoena*), harbor seals (*Phoca vitulina*), and gray seals (*Halichoerus grypus*) have been observed in the area.

### **Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the HRCP'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 HRCP, if appropriate.

Dated: October 2, 2020.

**Donna S. Wieting,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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