



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC994]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Army Corps of Engineers Debris Dock Replacement Project, Sausalito, California

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 U.S. Army Corps of Engineers (ACOE) to change the effective dates of the second re-issuance of a previously issued incidental harassment authorization (IHA), with the only change being the effective dates. The IHA authorizes take of seven species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Debris Dock Replacement Project in Sausalito, California. The ACOE has requested re-issuance with new effective dates of July 15, 2023 through July 14, 2024. 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 an identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from July 15, 2023 through July 14, 2024.

ADDRESSES: An electronic copy of the final 2021 IHA previously issued to the ACOE, the ACOE'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-army-corps-engineers-debris-dock-replacement-project-sausalito](https://www.fisheries.noaa.gov/action/incidental-take-authorization-army-corps-engineers-debris-dock-replacement-project-sausalito). In case

of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, 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 July 14, 2021, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Debris Dock Replacement project (86 FR 37124). The effective dates of that IHA were September 1, 2021, through August 31, 2022. On December 14, 2021, the ACOE informed NMFS that the project was delayed. None of the work identified in the initial IHA application (*e.g.*, pile driving and removal) had occurred. The ACOE submitted a request that we reissue an identical IHA that would be effective from January 5, 2022 through January 4, 2023, in order to conduct the construction work that was analyzed in support of the previously issued IHA. An identical IHA was reissued on December 27, 2021 (86 FR 73261). However, the project remains delayed and no work has been conducted. On December 6, 2022, the ACOE informed NMFS that, due to a project delay, none of the work identified in the original IHA (*e.g.*, pile driving and removal) has been conducted. The ACOE submitted a request that we reissue another IHA identical to the IHA issued July 14, 2021. The IHA was reissued on March 17, 2023 (88 FR 16412) with effective dates of January 1, 2024 through December 31, 2024. On May 2, 2023, the ACOE requested that the dates of the reissued IHA be updated to be effective from July 15, 2023 through July 14, 2024. As the project activities, anticipated effects, and required mitigation, monitoring, and reporting remain the same, 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 ACOE's construction project is to replace the existing decaying dock and other onshore infrastructure used to move marine debris collected from San Francisco Bay onto land for disposal. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to 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 whale (*Eschrichtius robustus*), bottlenose dolphin (*Tursiops truncatus*), California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*), and northern elephant seal (*Mirounga angustirostris*). 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 2021 IHA for the ACOE's construction work (86 FR 37124), the ACOE's application, the **Federal Register** notice of the proposed IHA (86 FR 28768), and all associated references and documents.

Determinations

The ACOE will conduct activities as analyzed in support of the initial 2021 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 2023 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 ACOE'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 (NEPA)

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) 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. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this reissued IHA.

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 ACOE for in-water construction activities associated with the specified activity from July 15, 2023 through July 14, 2024. All previously described mitigation, monitoring, and reporting requirements from the initial 2021 IHA are incorporated.

Dated: June 6, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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