



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XD135

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

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

ACTION: Notice of issuance of Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that two Letters of Authorization (LOA) have been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to maintenance construction activities at facilities in Washington.

DATES: The LOAs are effective from July 16, 2023, through January 15, 2024, and from July 16, 2023, through February 15, 2024.

ADDRESSES: The LOAs and supporting documentation are available online at:

www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa. 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 MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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.

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 April 17, 2019, we issued a final rule upon request from the Navy for authorization to take marine mammals incidental to maintenance construction activities at six facilities in Washington (84 FR 15963). The Navy plans to conduct construction necessary for maintenance of existing in-water structures at the following facilities: Naval Base Kitsap (NBK) Bangor, NBK Bremerton, NBK Keyport, NBK Manchester, Zelatched Point, and Naval Station Everett (NS Everett). These repairs include use of

impact and vibratory pile driving, including installation and removal of steel, concrete, plastic, and timber piles. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals.

For the 2023-2024 in-water work season, the Navy requested issuance of LOAs for work planned at NBK Bremerton and NBK Bangor. The Navy submitted site-specific monitoring plans. Following NMFS review and approval of the required plans, we have issued the requested LOAs. The approved plans are available online at:

www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa.

Authorization

We have issued two LOAs to the Navy authorizing the take of marine mammals incidental to maintenance construction activities, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities; (2) shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and (3) soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: July 5, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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