



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD498]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Construction at Naval Station Norfolk in Norfolk, Virginia

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 for authorization to take
small numbers of marine mammals incidental to construction activities associated with
the replacement of the Q8 bulkhead at Naval Station Norfolk over the course of 5 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 should be addressed to Jolie Harrison, Chief, Permits and
Conservation Division, Office of Protected Resources, National Marine Fisheries Service
and should be submitted via email to ITP.Cockrell@noaa.gov. An electronic copy of the
Navy'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 the document, please call the contact listed below.

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, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://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: Craig Cockrell, 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 (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 September 14, 2022, NMFS received an application from the Navy requesting authorization for take of marine mammals incidental to construction activities related to demolition and construction activities associated with the replacement of the Q8 bulkhead at Naval Station Norfolk. Following NMFS’ review of the application, the Navy provided responses to our questions on December 15, 2023. A revised version of the application was submitted on January 5, 2024 and the application was deemed adequate and complete on February 23, 2024. The requested regulations would be valid for 5-years, from January 1, 2025 through December 31, 2029. The Navy plans to conduct necessary work, including vibratory pile driving and removal and impact pile driving to remove aging components of the bulkhead and replacing the tongue and groove sheet piles between Piers 11 and 14 and areas to the north of Pier 14. The

proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, potentially resulting in incidental take, by Level B harassment. Therefore, the Navy requests an authorization to incidentally take marine mammals.

Specified Activities

The Navy is proposing to remove old components of the Q8 bulkhead at Naval Station Norfolk and replace those with new to maintain the use and lifespan of the bulkhead from Pier 11 to the northern jetty just past Pier 14. Work would be conducted over three phases. The entire project scope includes the removal of 378 existing piles from the old bulkhead and installation of 836 piles to construct the new bulkhead structure. The Navy expects construction will require approximately 212 in-water workdays over the 5-year period.

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: March 11, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.