



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD929]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Lower Columbia River Dredged Material Management Plan, Oregon and Washington

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. Army Corps of Engineers (USACE), Portland District, for authorization to take, by Level A and Level B harassment only, small numbers of marine mammals incidental to the Lower Columbia River (LCR) Dredged Material Management Plan (DMMP), in Oregon and Washington, for a period of 5 years from November 2028 through February 2032. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of USACE'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 USACE'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 application 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/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.

An electronic copy of USACE'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 below.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, 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 immitigable 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 October 18, 2023, NMFS received an application from the USACE requesting authorization for take of marine mammals incidental to in-water construction activities associated with the LCR DMMP in Oregon and Washington between River Mile (RM) 23 and RM 36. We provided comments on the application and the USACE submitted a revised version on February 27, 2024. We deemed the application adequate and complete on April 25, 2024. The requested regulations under which we would issue the requested

LOA would be valid for 5 years, November 2028 through February 2032. The USACE plans to construct new structures with pilings in the Lower Columbia River. The full DMMP includes proposed dredging and placement operations between RM 3 and RM 105.5. However, the scope of this request for a LOA is limited to potential pile driving that would be associated with any new structures installed under the DMMP which would occur between RM 23 and RM 36. In-water impact and vibratory pile driving of steel and timber piles may incidentally expose marine mammals to elevated levels of noise, thereby resulting in incidental take, by Level A and Level B harassment only. Therefore, the USACE requests authorization to incidentally take marine mammals.

Specified Activities

The purpose of the proposed project is to maintain the authorized LCR Federal Navigation Channel depth and width for a minimum of 20 years in the least cost, operationally feasible, and environmentally acceptable manner in order to provide continued reliable, safe, and efficient transportation of waterborne commerce and uninterrupted transit for fully loaded vessels in the LCR. The USACE anticipates 141 in-water work days will be required to install approximately 1,029, 12-inch timber piles and 1,038, 24-inch steel piles via impact and vibratory driving over 5 years. The number of in-water work days per year would range from 1 (Year 2) to 51 (Year 5). Take by Level A and Level B harassment has been requested for harbor seal (*Phoca vitulina richardii*), Steller sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*). The USACE's application contains mitigation and monitoring measures designed to reduce impacts to marine mammals. The application also contains proposed marine mammal monitoring and reporting plans.

Information Solicited

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

Dated: May 7, 2024.

Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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