



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 241003-0261]

RIN 0648-BM74

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Repair and Replacement of the Q8 Bulkhead at Naval Station Norfolk

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

ACTION: Final rule; delay of effective and expiration dates; correction.

SUMMARY: NMFS published a final rule on October 9, 2024, for the taking of marine mammals incidental to the Q8 bulkhead repair and replacement project at Naval Station (NAVSTA) Norfolk in Norfolk, Virginia over the course of 5 years (*i.e.*, 2025-2029). The Navy has requested the effective date of the rule be modified from January 1, 2025, to August 4, 2025, and modify the expiration date from December 31, 2029 to August 3, 2030.

DATES: The effective date of the regulations published at 89 FR 81848, October 9, 2024, is delayed until August 4, 2025, and the expiration date is revised to August 3, 2030. This correction is effective August 4, 2025, and expires August 3, 2030.

ADDRESSES: A copy of the Navy's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navys-construction-activities-q8-bulkhead-naval-station>.

In case of problems accessing these documents, please call the contact listed below.

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.

On July 3, 2024 NMFS published the proposed rule to authorize the taking of marine mammals incidental to the Q8 bulkhead repair and replacement project at NAVSTA Norfolk. During the 30-day comment period of the proposed rule NMFS received two comments. NMFS responded to the two comments in the original final rule (89 FR 81848, October 9, 2024).

NMFS published the final rule on October 9, 2024 (89 FR 81848), which allows for authorization of the take of small numbers of four marine mammal species incidental to the Q8 bulkhead repair and replacement project. This project involves work on the bulkhead from Piers 12 and 14 to restore function of this Navy dock system. Vibratory and impact hammers will be used for pile removal and installation. Sounds produced from these pile removal and installation activities may result in the incidental take of marine mammals, by Level B harassment only. Approximately 378 piles will be removed and 836 piles will be installed. Work will be conducted in 3 phases over 212 non-consecutive days to complete the pile removal and installation activities.

The original effective dates finalized in the rule (89 FR 81848, October 9, 2024) were January 1, 2025 through December 31, 2029. Recently, the Navy's construction schedule has been delayed, and as such, the Navy has requested NMFS delay and modify the effective dates. This final rule will delay the effective date from January 1, 2025 to August 4, 2025 and modify the expiration date from December 31, 2029 to August 3, 2030. This delay and modification of effective dates do not change the duration of the incidental take regulations or change any of the findings and take estimates or the requirements for mitigation, monitoring, and reporting, in the original final rule.

Administrative Procedures Act

The Assistant Administrator for Fisheries (AA) finds that there is good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary delay is unnecessary and contrary to the public interest. Such procedures are unnecessary because the final rule that published on October 9, 2024 (89 FR 81848), has already been subject to notice and comment, and all that remains is to notify the public of this delay and modification to the effective dates of the previously noticed regulations. Providing additional prior notice and opportunity for public comment is contrary to the public interest because there is a need to immediately implement this action to delay the original January 1, 2025 effective date and modify the expiration date of the regulations contained in 50 CFR 217.231. Failure to modify the effective dates risks a potential lapse in coverage for the Navy's construction activities for the Q8 bulkhead repair and replacement project at NAVSTA Norfolk.

Dated: December 19, 2024.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 as follows:

**PART 217 – REGULATIONS GOVERNING THE TAKING AND IMPORTING
OF MARINE MAMMALS**

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

Subpart X -- Taking and Importing Marine Mammals Incidental to Navy

Construction of the Q8 Bulkhead Repair and Replacement Project at Naval Station

Norfolk at Norfolk, Virginia

2. Revise § 217.231 to read as follows:

§ 217.231 Effective dates

Regulations under this subpart are effective from August 4, 2025, through August 3, 2030.

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