



MARINE MAMMAL COMMISSION

18 July 2017

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the Alaska Department of Transportation and Public Facilities (AK DOT) seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to construction of a new dock in Sand Point, Alaska. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 6 July 2017 notice (82 Fed. Reg. 31400) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

AK DOT plans to remove and install piles during construction of a new city dock. Operators would install up to 63 24- to 30-in permanent steel pipe piles and 90 18-in temporary steel pipe or H-piles using a vibratory and impact hammer. They would remove temporary piles using a vibratory hammer. AK DOT's activities could occur on up to 40 days, weather permitting. It would limit pile-driving and -removal activities to daylight hours and expect the activities to occur from 1 August to 31 December 2018.

NMFS preliminarily has determined that, at most, the proposed activities could cause Level A and/or B harassment of small numbers of nine marine mammal species. NMFS anticipates that any impact on the affected species and stocks would be negligible. NMFS also does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures¹ include—

- using a sound attenuation device (i.e., pile caps) during impact driving of piles;
- ceasing pile-driving and -removal activities if any marine mammal comes within 10 m of the equipment;
- using two qualified protected species observers to monitor the Level A and B harassment zones for 30 minutes before, during, and for 30 minutes after the proposed activities;

¹ The Commission highlighted some typos, errors, and instances of missing information in the *Federal Register* notice, which NMFS indicated it would revise and include in the final authorization.

- using standard soft-start, delay, and shut-down procedures²;
- using delay and shut-down procedures, if a species for which authorization has not been granted or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level A and/or B harassment zone;
- reporting injured and dead marine mammals to the Office of Protected Resources and the Alaska Regional Stranding Coordinator using NMFS's phased approach and suspending activities, if appropriate; and
- submitting a final report.

Rounding of take estimates

The method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. In this instance, NMFS also used fractional group sizes and fractional activity days to inform its take estimation. As the Commission has indicated in previous letters regarding this matter³, the issue at hand involves policy rather than mathematical accuracy. The Commission understands NMFS has developed criteria associated with rounding that it had planned to share with the Commission a few months ago. The Commission looks forward to receiving and reviewing those criteria and thereby resolving this matter in the near future.

Please contact me if you have questions regarding the Commission's comments or recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.,
Executive Director

² The Commission mentioned to NMFS that it included an incorrect clearance time for cetaceans in the *Federal Register* notice. NMFS indicated it would include the standard 15-minute clearance time for small cetaceans and pinnipeds and 30-minute clearance time for medium-sized and large cetaceans in the final authorization.

³ See the Commission's [29 November 2016 letter](#) detailing this issue.