



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, Washington 98115

July 15, 2013

Captain P.M Dawson
Department of the Navy
Naval Base Kitsap
120 South Dewey Street
Bremerton, Washington 98314-5020

Dear Captain Dawson:

This correspondence transmits the Incidental Take Statement (ITS) for pile driving activities conducted by the Department of the Navy during construction of the second Explosives Handling Wharf (EHW-2). Our agencies previously completed Endangered Species Act section 7(a)(2) interagency consultation on this project and the National Marine Fisheries Service (NMFS) prepared a biological opinion for that consultation (NMFS No. 2011/00658). The biological opinion concluded that the action at Naval Base Kitsap Bangor (NBK) will adversely affect, but not jeopardize the continued existence of various salmonids, rockfish species, and the eastern Distinct Population Segment (DPS) of Steller sea lions (*Eumetopias jubatus*).

The biological opinion for NMFS No. 2011/00658 included an ITS for salmonids and rockfish, but not for incidental take of Steller sea lions. The biological opinion did state that an ITS would be forthcoming pending the issuance of an Incidental Harassment Authorization under section 101 of the Marine Mammal Protection Act exempts the Navy from the take prohibitions of section 9 of the Endangered Species Act of 1973, as amended (ESA), with respect to take incidental to pile driving activities for EHW-2, provided the included terms and conditions are met.

On December 21, 2011, NMFS published a notice in the Federal Register regarding the proposed issuance of an MMPA incidental take authorization to the Navy for the harassment of small numbers of several species of marine mammals incidental to pile driving activities conducted during construction of the EHW-2 (76 FR 79410). Subsequently, NMFS concluded that acoustic effects of the propose action will cause only the incidental harassment (as defined by 16 U.S.C. 1362(18)) of small numbers of certain species of marine mammals, would have no more than a negligible impact on these stocks, would not have an unmitigatable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks. As a result, NMFS determined the requirements of MMPA section 101(a)(5)(D) have been met. On July 11, 2013, NMFS issued an incidental harassment authorization under section 101 of the addressing Steller sea lions.



The MMPA authorization covers effects on Steller sea lions. Because Steller sea lions are protected under both the MMPA and the ESA, take of these animals must be authorized under both Acts, if any is anticipated. Since the MMPA authorization has been granted, NMFS now provides take exemption under the ESA for Steller sea lions for a corresponding period of one year. The attached ITS addresses Steller sea lions and it also fully incorporates, and does not change, the prior ITS that addressed salmonid and rockfish species. Thus, the attached ITS is additive to the 2011 biological opinion in place of the prior ITS.

The September 29, 2011 biological opinion remains valid and neither the MMPA authorization nor the issuance of the ITS for Steller sea lions provides new information about the effects of the action or any other basis to require reinitiation of the consultation. As stated in the biological opinion, and as provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of the incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in the opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in the opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take authorized in the ITS is exceeded, the Navy should immediately request reinitiation of formal consultation.

If you have any questions regarding the ITS for Steller sea lions, please contact Teresa Mongillo in our Seattle office at (206) 526-4749, or electronic email at Teresa.Mongillo@noaa.gov.

Sincerely,



William W. Stelle, Jr.
Regional Administrator



2.8 Incidental Take Statement

Section 9 of the ESA and Federal regulation pursuant to section 4(d) of the ESA prohibit the take of endangered and threatened species, respectively, without a special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by regulation to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. For purposes of this consultation, we interpret “harass” to mean an intentional or negligent action that has the potential to injure an animal or disrupt its normal behaviors to a point where such behaviors are abandoned or significantly altered.¹ Section 7(b)(4) and Section 7(o)(2) provide that taking that is incidental to an otherwise lawful agency action is not considered to be prohibited taking under the ESA, if that action is performed in compliance with the terms and conditions of this incidental take statement.

Where an endangered or threatened marine mammal species is involved, section 7(b)(4) of the Endangered Species Act (ESA) requires that any incidental take be authorized pursuant to section 101(a)(5) of the MMPA in order to also provide take exemption under the ESA. Thus, NMFS did not include an ESA incidental take exemption for Steller sea lions in NMFS consultation no. 2011/00658, deferring instead until the issuance of an IHA under the MMPA. Now that the MMPA authorization has been issued, this ITS provides take exemption for the eastern DPS Steller sea lions affected by the proposed action for a corresponding one-year period. The ITS for the ESA incidental take of Puget Sound (PS) Chinook salmon (*Oncorhynchus tshawytscha*), Hood Canal summer-run (HCSR) chum salmon (*O. keta*), PS steelhead (*O. mykiss*), and PS/Georgia Basin DPSs of yelloweye rockfish (*Sebastes paucispinis*), canary rockfish (*S. pinniger*), and bocaccio (*S. paucispinis*) is addressed ITS for the biological opinion for NMFS consultation no. 2011/00658. This statement is additive to the ITS for NMFS consultation no. 2011/00658 which remains in effect as presented in the biological opinion for that consultation.

2.8.1 Amount or Extent of Take

The effects of the proposed construction will co-occur with the presence of Steller sea lions such that incidental take of those species is reasonably certain to occur. NMFS anticipates that incidental take in the form of harassment of small numbers of Steller sea lions will accrue from exposure to the acoustic effects of the Navy’s pile driving activities conducted during the construction of the EHW-2. These activities and their effects are described in the biological opinion, and in the Incidental Harassment Authorization (IHA). NMFS does not expect any other form of incidental take of Steller sea lions, other than incidental harassment by exposure to

¹ NMFS has not adopted a regulatory definition of harassment under the ESA. The World English Dictionary defines harass as “to trouble, torment, or confuse by continual persistent attacks, questions, etc.” The U.S. Fish and Wildlife Service defines “harass” in its regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). The interpretation we adopt in this consultation is consistent with our understanding of the dictionary definition of harass and is consistent with the U.S. Fish and Wildlife interpretation of the term.

pile driving sound. No Steller sea lions will be injured or killed by the Navy's construction activities, and this statement does not exempt any such take.

From the analysis for the ESA and MMPA consultations, the action will cause 390 exposures of Steller sea lions to sound above the behavioral disruption threshold of 120dB during the one-year period covered by the IHA. This estimate is based on the predicted abundance of animals in the project vicinity and the number of construction days (a maximum of 195 days in the first year of construction). Abundance was calculated as the monthly average of the maximum daily number observed in a given month. The number of estimated Steller sea lion exposures to sound above this threshold represents the amount of potential take by harassment. The number of Steller sea lions exposed to pile driving and removal activities will be measured with visual monitoring techniques as described in the IHA (as referenced in the Terms and Conditions). If there are more than 390 exposures of Steller sea lions during the one-year of pile driving and removal activities the amount of take will be exceeded, NMFS must be immediately informed, and the reinitiation provisions of the ESA consultation will apply.

At this time, NMFS is not providing a take exemption beyond one year since there is currently no MMPA authorization in place for future years. NMFS will continue to amend the ITS as MMPA authorization occurs for future years.

2.8.2 Effect of the Take

The level of anticipated incidental take of the eastern DPS Steller sea lion in the proposed action is not likely to result in the jeopardy to the species.

2.8.3 Reasonable and Prudent Measures and Terms and Conditions

“Reasonable and prudent measures” are nondiscretionary measures to minimize the amount or extent of incidental take (50 CFR 402.02). The terms and conditions described below are non-discretionary, and the Navy or any applicant must comply with them in order to implement the reasonable and prudent measures (50 CFR 402.14).

The NMFS believes that the full application of minimization measures included as part of the proposed action, together with use of the reasonable and prudent measures (RPMs) and terms and conditions described below, are necessary and sufficient to avoid, minimize, and offset the incidental take of listed species resulting from the proposed action. The Navy has included design features in their proposed action to minimize the area of overwater cover and shade, particularly in the important nearshore habitat along the NBK Bangor waterfront; therefore NMFS has not proposed any RPMs or terms and conditions to address overwater cover.

Pursuant to section 7(b)(4) of the Endangered Species Act, the following reasonable and prudent measures are necessary and appropriate to minimize incidental take of Steller sea lions:

1. Minimize take from exposure to the acoustic effects of the proposed action.

To implement RPM 1 and maintain the validity of the incidental take exemption provided by this statement, the Navy must fully comply with the following term and condition:

1. The Navy shall fully implement the general conditions, mitigation measures, monitoring, and reporting described in the IHA, dated July 11, 2013. See Attachment A.

NOTICE: If a sick, injured or dead specimen of a threatened or endangered species is found in the action area, the finder must notify NMFS Law Enforcement at (206) 526-6133 or (800) 853-1964, through the contact person identified in the transmittal letter for this opinion, or through the NMFS Washington State Habitat Office. The finder must take care in handling sick or injured specimens to ensure effective treatment, and in handling dead specimens to preserve biological material in the best possible condition for later analysis of cause of death. The finder should carry out instructions provided by Law Enforcement to ensure evidence intrinsic to the specimen is not disturbed unnecessarily.

Attachment A



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Department Of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

INCIDENTAL HARASSMENT AUTHORIZATION

The U.S. Navy (Navy), Naval Base Kitsap Bangor, Washington, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)), to harass marine mammals incidental to a wharf construction project in the Hood Canal, Washington.

1. This Incidental Harassment Authorization (IHA) is valid from July 16, 2013 through February 15, 2014.
2. This IHA is valid only for pile driving and removal activities associated with construction of Explosive Handling Wharf #2 (EHW-2) in the Hood Canal, Washington.
3. General Conditions
 - (a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.
 - (b) The species authorized for taking are the harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus californianus*), killer whale (transient only; *Orcinus orca*), Steller sea lion (*Eumetopias jubatus monteriensis*), Dall's porpoise (*Phocoenoides dalli dalli*), and the harbor porpoise (*Phocoena phocoena vomerina*).
 - (c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 (attached) for numbers of take authorized.
 - (d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in item 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.
 - (e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.
 - (f) The Navy shall comply with applicable equipment noise standards and ensure that all construction equipment has noise control devices no less effective than those provided on the original equipment.



4. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

- (a) During impact pile driving, the Navy shall implement a minimum shutdown zone of 20 m radius around the pile, to be effective for all species of pinniped, and a minimum shutdown zone of 85 m radius around the pile, to be effective for all species of cetacean. If a marine mammal comes within the relevant zone, such operations shall cease. No marine mammal shall be exposed to sound pressure levels equaling or exceeding 180/190 dB rms (re 1 μ Pa) for cetaceans and pinnipeds, respectively, in order to prevent unauthorized Level A harassment.
- (b) During vibratory pile driving and removal, the Navy shall implement a minimum shutdown zone of 10 m radius around the pile for marine mammals. If a marine mammal comes within this zone, such operations shall cease. No marine mammal shall be exposed to sound pressure levels equaling or exceeding 180/190 dB rms (re 1 μ Pa) for cetaceans and pinnipeds, respectively, in order to prevent unauthorized Level A harassment.
- (c) The Navy shall similarly avoid direct interaction with marine mammals during in-water heavy machinery work other than pile driving that may occur in association with the wharf construction project. If a marine mammal comes within 10 m of such activity, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions, as appropriate.
- (d) The Navy shall establish monitoring locations as described in the Marine Mammal Monitoring Plan (Monitoring Plan; attached). For all pile driving activities, a minimum of one observer shall be assigned to each active pile driving rig in order to monitor the shutdown zones, while at least two additional observers shall be positioned for optimal monitoring of the surrounding waters within the Waterfront Restricted Area (WRA). These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals.
- (e) Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (i.e., the entire shutdown zone and surrounding waters within the WRA must be visible to the naked eye).

- (f) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted (i.e., implementation of shutdown at one pile driving location may not necessarily trigger shutdown at other locations when pile driving is occurring concurrently). If pile driving is halted or delayed at a specific location due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.
- (g) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.
- (h) Approved sound attenuation devices shall be used during impact pile driving operations. The Navy shall implement the necessary contractual requirements to ensure that such devices are capable of achieving optimal performance, and that deployment of the device is implemented properly such that no reduction in performance may be attributable to faulty deployment.
- (i) The Navy shall use soft start techniques recommended by NMFS for impact pile driving. The soft start requires contractors to provide an initial set of strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.
- (j) Pile driving shall only be conducted during daylight hours.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

- (a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction related tasks while conducting monitoring.
- (b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

- (a) Submit a draft report on all marine mammal monitoring conducted under the IHA within 90 calendar days of the end of the in-water work period. A final report shall be prepared and submitted within 30 days following resolution of comments

on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see attached).

(b) Reporting injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division (301-427-8425), Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator (206-526-6550), NMFS. The report must include the following information:

1. Time and date of the incident;
2. Description of the incident;
3. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
4. Description of all marine mammal observations in the 24 hours preceding the incident;
5. Species identification or description of the animal(s) involved;
6. Fate of the animal(s); and
7. Photographs or video footage of the animal(s).

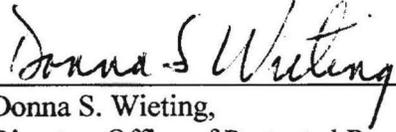
Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

(ii) In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), Navy shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Navy shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.



Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

JUL 11 2013

Date

Table 1. Authorized take numbers, by species

Species	Authorized Take
Harbor seal (<i>Phoca vitulina</i>)	10,530
California sea lion (<i>Zalophus californianus</i>)	6,045
Steller sea lion (<i>Eumetopias jubatus</i>)	390
Killer whale (<i>Orcinus orca</i>)	180
Dall's porpoise (<i>Phocoenoides dalli</i>)	195
Harbor porpoise (<i>Phocoena phocoena</i>)	1,950