

### International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of CLPP, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation. If the ITC determines that material injury, or threat of material injury does exist, but finds no critical circumstances, the Department will instruct CBP refund or cancel all securities posted prior to April 17, 2006.

### Notification Regarding APO

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: August 30, 2006.

**David M. Spooner,**

*Assistant Secretary, for Import  
Administration.*

[FR Doc. 06-7538 Filed 9-7-06; 8:45 am]

**BILLING CODE 3510-DS-M**

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

[I.D. 051906B]

#### Taking of Marine Mammals Incidental to Specified Activities; Harbor Redevelopment Project, Moss Landing Harbor, California

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

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the Moss Landing Harbor District (MLHD) to take small numbers of Pacific harbor seals and California sea lions by harassment incidental to the harbor redevelopment project in Moss Landing Harbor, California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to MLHD to incidentally take, by harassment, small numbers of these two species of pinnipeds during the next 12 months.

**DATES:** Comments and information must be received no later than October 10, 2006.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. The mailbox address for providing email comments is [PR1.051906B@noaa.gov](mailto:PR1.051906B@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: 051906B. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application and Biological Assessment for the North Harbor Redevelopment Project may be obtained by writing to this address or by telephoning the contact listed here.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, NMFS, (301) 713-2289, ext 137, or Monica DeAngelis, NMFS, (562) 980-3232.

#### 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 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 authorization shall be granted if NMFS finds that the taking will be small, 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, and that 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."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. 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].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On April 24, 2006, NMFS received a request from the Terrestrial and Aquatic Biological Resources, on behalf of MLHD, to take small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to the North Harbor Redevelopment Project in Moss Landing Harbor, Monterey County, California.

The proposed project includes construction of a 100 ft (30.5 m) long by

90 ft (27.4 m) wide boat ramp, a 5,000 square foot (464.5 m<sup>2</sup>) public wharf with pedestrian promenade and seating areas, and installation of a 171 ft long (52.1 m) by 10 ft (3.1 m) wide floating dock. The total proposed project site is 4.5 acres (18,211.5 m<sup>2</sup>). The construction phase of the redevelopment would involve driving a total of 72 piles: 9 for the boat ramp, 53 for the public wharf and promenade, and 10 for the floating dock. Installation of the pilings would most likely be from a land-based driver, however, a barge may be used for installation. The pilings will be concrete, 16-inch square for the wharf and the boat launch ramp boarding floats, and 20-inch square for the dock.

An impact hammer is required for installation of the piles. The energy output levels of the impact hammer are approximately 48–94 kilojoules (kJ) (or 35,381–69,458 foot-pound force (ft-lbs)), depending on the setting. The hammer would be operating at the rate of 36–52 blows per minute. The underwater noise level is measured at approximately between 165 - 175 dB re 1 microPa rms at 10 m (32.8 ft), and 155–170 dB re 1 microPa rms at 20 m (65.6 ft). It takes approximately 20 - 40 minutes drive time to install each pile; therefore, the maximum time required to install all piles would be 48 hours. The pile driving is estimated to take an estimated 27 working days during a period of 7–9 months to complete. The proposed project would start in summer/fall 2006.

#### **Description of the Marine Mammals Potentially Affected by the Activity**

Marine mammals that may occur near the proposed project site are Pacific harbor seals and California sea lions. General information on these marine mammal species can be found in Caretta *et al.* (2006), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf>. Refer to that document for information on these species. None of the marine mammals species found in the proposed project areas is listed under the Endangered Species Act (ESA) or designated as depleted under the MMPA. Additional information on the abundance and occurrence of these species within or close to the proposed project area is presented below.

#### *Pacific harbor seal*

Pacific harbor seals are mainly seen on the sand bar at the North area of the harbor (North Harbor), which is about 575 ft (175.3 m) west from the proposed project area, across a Federal navigation channel. They are also seen along the boat dock area, and swimming to and from the ocean. The North Harbor sand

bar is not a typical Pacific harbor seal pupping area. The closest known seal pupping area is over 0.5 mile (0.8 km) east of the proposed project area at Seal Bend in Elkhorn Slough (NMFS, 2004).

The number of Pacific harbor seals varies seasonally and with the time of day. They are most abundant during the day with approximately 20 - 100 individuals at the North Harbor sand bar, but leave the sand bar in the evening to feed in Monterey Bay. The number of seals are most abundant during the pupping and molting season from May to August.

#### *California sea lion*

California sea lions have been seen on the North Harbor docks but their occurrence within the proposed project area is rare. Usually there are fewer than 2 individuals in the vicinity of Moss Landing Harbor (L. McIntyre, MLHD, 2006). Most of the sea lions in the Monterey Bay area are males of varying age classes that arrive in early fall from their southern breeding ground (Monterey Bay Aquarium, 1999). Many individuals remain over the course of the winter until the following spring, with just a few sea lions staying through the summer. There are no breeding areas for the California sea lion located in the Monterey Bay area, and most individuals migrate to offshore breeding sites in southern California and Mexico (NMFS, 2004).

#### **Potential Effects on Marine Mammals and Their Habitat**

Construction of the boat ramp, public wharf and promenade, and floating docks has the potential to result in Level B behavioral harassment of Pacific harbor seals and California sea lions that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. The impact to these marine mammals is expected to be disturbance by the presence of workers, construction noise, and possibly construction vessel traffic if pile driving is to be conducted from a barge. Disturbances could alter seal and sea lion behaviors and cause the animals to temporarily disperse from the area, or to flush and possibly return or could result in temporary use of an alternate haul out site in Monterey Bay.

Noise from pile driving is expected to be much louder than all other noises from the construction. However, the impact hammer being selected has energy levels at 48 - 94 kJ (35,381 - 69,458 ft-lbs). These energy levels are significantly less than either of the two pile drivers being used on the San Francisco-Oakland Bay Bridge (SF-OBB) (see 68 FR 64595, November 14, 2003),

which are 500 kJ and 1,700 kJ. As a result, airborne and underwater impact zones for marine mammals (and other aquatic life) will be significantly smaller than at SF-OBB.

Based on underwater noise levels measured in 2004 during a separate project at Pier 40 in San Francisco, the hammer's impulses were recorded approximately between 165 - 175 dB re 1 microPa rms at 10 m (32.8 ft), and 155 - 170 dB re 1 microPa rms at 20 m (65.6 ft) from the pile. These levels are significantly below 190 dB re 1 microPa rms, the level NMFS uses to estimate Level A harassment of pinnipeds and the onset of temporary threshold shift (TTS) in pinniped hearing (see 68 FR 64595, November 14, 2003).

A self-monitoring program was also conducted in July 2006 to obtain airborne noise levels from pile driving. Time-averaged acoustic values in air ranged from 80 to 90 dB re 20 microPa, with peak discrete values approaching 100 dB re 20 microPa at 250 feet (76 m) from the sound source (Sea Engineering Inc., 2006). Studies have shown that when exposed to sound levels between 98.9 and 101 dB (re 20 microPa) from rocket launch, harbor seals responded by fleeing into the water but many returned to land within several hours (Stewart, 1993). Ringed seals (*Phoca hispida*) exhibited little or no reaction to pipe-driving noise measured at 112 and 96 dB re 20 microPa and 90 dB re 20 microPa<sup>2s</sup> (Blackwell *et al.*, 2004).

#### **Mitigation**

The following mitigation measures are proposed to be required under the proposed IHA to be issued to MLHD for construction activities, including pile driving, associated with the harbor redevelopment project at Moss Landing Harbor. NMFS believes that the implementation of these mitigation measures would reduce impacts to marine mammals to the lowest extent practicable.

#### *Time and Location*

Construction activities, including pile driving, would only take place during daylight hours between 7 am to 5 pm, when marine mammal monitoring prior to and during the pile driving can be effectively implemented.

#### *Establishment of Safety Zones*

Before any pile driving, a clearly marked 500-ft (152.4 m) radius safety zone for Pacific harbor seals and California sea lions will be established. The safety zone would be marked by buoys for easy monitoring. At these distances, underwater sound pressure levels (SPLs) are expected to be

significantly reduced from 165 - 175 dB re 1 microPa rms measured at 10 m (32.8 ft), and airborne noise levels are expected to be way below 80 - 90 dB re 20 microPa measured at 250 feet (76 m). These SPLs are not believed to cause Level A harassment or onset of TTS (Level B harassment).

Biological observers on a boat will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving begins. If marine mammals are found within the safety zone, pile driving will be delayed until they move out of the area. If a marine mammal is seen above the water and then dives below, pile driving will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994).

Once pile driving begins it will not be stopped until that pile is installed because any interruption would take longer for the pile to be installed, thus introducing more acoustic energy into the water column. Each pile driving takes about approximately 20 - 40 minutes to complete. The marine mammal observers will record the behaviors/reactions by any marine mammals in or near the safety zone.

#### *Soft Start*

Although marine mammals will be protected from Level A harassment by establishment of a safety zone of 500-ft (152.4 m) radius, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area, thus further reducing the incidence of Level B harassment from startling marine mammals with a sudden intensive sound, MLHD will implement "soft start" practice when startup pile driving. By implementing the "soft start" practice, pile driving would be initiated at an energy level less than full capacity (i.e., approximately 40-60 percent energy levels) for at least 5 minutes before gradually escalate to full capacity. This would ensure that, although not expected, any pinnipeds that are undetected during safety zone monitoring will not be injured.

#### *Compliance with Equipment Noise Standards*

To mitigate noise levels and, therefore, impacts to Pacific harbor seals

and California sea lions, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S.

Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

#### **Monitoring and Reporting**

MLHD would implement a monitoring plan that would collect data for each distinct marine mammal species observed during pile driving at the Moss Landing Harbor construction site. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving will be recorded.

Monitoring would be conducted by qualified NMFS-approved biologists. Binoculars and range finders would be provided to marine mammal observers for accurately identifying species and determining distances.

Monitoring would begin prior to the first day of the pile driving to establish baseline data, and would occur during the entire period when pile driving is underway, and would continue for 30 minutes after the pile driving. Post construction monitoring would also be conducted for a period of one day upon completion of pile driving to identify any change of pinniped behaviors.

Before the startup of the pile driving, marine mammal observers would visually survey the area to confirm the safety zone is clear of any marine mammals. Pile driving will not begin until the safety zone is clear of marine mammals. Monitoring would continue by the observers on a boat during the entire period of pile driving. However, as described in the Mitigation section, once pile driving begins, operations will continue uninterrupted until that pile is installed. However, if driving of a pile is completed and a marine mammal is sighted within the designated safety zone prior to commencement of the next pile driving, the observer(s) must notify the pile driver (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation).

MLHD would submit a final report to NMFS 90 days after completion of the proposed project. The final report would include data collected for each distinct marine mammal species observed in the vicinity of the construction area during pile driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile

driving would also be included in the final report.

#### **ESA**

Based on a review conducted by NMFS biologists, no ESA-listed species are expected to occur in the proposed action area, therefore, NMFS has determined that no species listed under the ESA are likely to be affected and, therefore, a section 7 consultation is not warranted.

#### **National Environmental Policy Act (NEPA)**

NMFS prepared an Environmental Assessment (EA) on the issuance of an IHA for the taking of marine mammals incidental to demolition of the Sandholdt Road Bridge and construction of a new bridge in Moss Landing, California, in 2004 and made a Finding of No Significant Impact (FONSI) on December 21, 2004. The proposed action discussed in this document is not substantially different from the action analyzed in the 2004 EA, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past 2 years that would warrant new NEPA documentation. Therefore, a new EA is not warranted for the proposed project.

#### **Preliminary Determinations**

For the reasons discussed in this document and identified supporting documents, NMFS has preliminarily determined that the impact of pile driving associated with Moss Landing Harbor redevelopment project would result, at worst, in the Level B harassment of small numbers of Pacific harbor seals and California sea lions in the vicinity of the proposed project area. While behavioral modifications, including temporarily vacating the area during the pile driving, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas near Monterey Bay and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on Pacific harbor seal and California sea lion populations near the proposed project area.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

**Information Solicited**

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: September 1, 2006.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. E6-14905 Filed 9-7-06; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[I.D. 081806E]

**Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 116-1691; U.S. Fish and Wildlife Service File No. PRT-062475**

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821 (Todd Robeck, D.V.M., Ph.D., Responsible Party and Principal Investigator) has been issued a permit to collect, receive, import, and export marine mammal specimens for scientific research purposes.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824-5312; fax (727)824-5309.

**FOR FURTHER INFORMATION CONTACT:**

Amy Sloan or Jennifer Skidmore, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** On October 9, 2003, notice was published in the **Federal Register** (68 FR 58316) that a request for a scientific research permit had been submitted by the above-named organization. The requested permit has been issued under

the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR parts 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

Sea World, Inc., has been issued a scientific research permit to collect, receive, import, and export a specified number of marine mammal specimens under the jurisdiction of NMFS and USFWS to study reproductive physiology, including endocrinology, gamete biology, cryophysiology, and assisted reproductive techniques. Species authorized include bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), killer whale (Orcinus orca), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Commerson's dolphin (*Cephalorhynchus commersonii*), short-beaked common dolphin (*Delphinus delphis*), false killer whale (*Pseudorca crassidens*), Baiji (*Lipotes vexillifer*), Vaquita (*Phocoena sinus*), and walrus (*Odobenus rosmarus*). Only specimens collected legally and in a humane manner would be authorized by the permit. Sources of samples may include animals that have already died and from captive animals during routine husbandry procedures. No animals may be intentionally killed for the purpose of collecting specimens, and no money can be offered for the specimens. Specimens may be taken world-wide at anytime of the year for up to five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 1, 2006.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

Dated: September 1, 2006.

**Charlie R. Chandler,**

*Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. 06-7521 Filed 9-7-06; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DOD-2006-OS-0177]

**Manual for Courts-Martial; Proposed Amendments**

**AGENCY:** Joint Service Committee on Military Justice (JSC), Department of Defense.

**ACTION:** Notice of proposed amendments to the Manual for Courts-Martial, United States (2005 ed.) and notice of public meeting (modification).

**SUMMARY:** The Department of Defense published proposed changes to the Manual for Courts-Martial (2005 ed.) on August 10, 2006, in the **Federal Register** (Volume 71, Number 154) [Notices] [Page 45780-45797]. This announcement modifies that former publication to include information concerning submitting comments, and extends the time period for submission.

**DATES:** Comments on the proposed changes must be received no later than October 13, 2006, to be assured consideration by the JSC. A public meeting concerning these proposed changes will be held on September 18, 2006 at 11 a.m. in the 14th Floor Conference Room, 1777 N. Kent St., Rosslyn, VA 22209-2194.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at