

Suspended Investigation; Opportunity to Request Administrative Review, 74 FR 45179 (September 1, 2009). On September 30, 2009, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the petitioner, the Crawfish Processors Alliance, requested an administrative review of the order with respect to, among others, Yancheng Hi-King, an exporter of crawfish from the PRC. On October 26, 2009, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative review of the order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956 (October 26, 2009).

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, “in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.” We received a notice of withdrawal from the petitioner with respect to the review requested of Yancheng Hi-King within the 90-day time limit. See letter from the petitioner dated January 25, 2010. Because we received no other requests for review of Yancheng Hi-King, we are rescinding the review of the order with respect to Yancheng Hi-King. This rescission is in accordance with 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notification to Importer

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: March 10, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010-6267 Filed 3-19-10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XS23

Small Takes of Marine Mammals Incidental to Specified Activities; Dumbarton Bridge Seismic Retrofit Project, California

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the California Department of Transportation (Caltrans) allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to pile driving associated with the Dumbarton Bridge Seismic Retrofit Project.

DATES: Effective August 15, 2010, through August 14, 2011.

ADDRESSES: A copy of the IHA and the application are available by writing 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. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, 301-713-2289.

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. 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].”

Authorization for incidental takings shall be granted if NMFS finds that the taking will 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 (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.”

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. 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 the authorization.

Summary of Request

On April 17, 2009, NMFS received a request from Caltrans to harass marine mammals incidental to the Dumbarton Bridge Seismic Retrofit Project. NMFS issued a notice in the **Federal Register**

on December 4, 2009 (74 FR 63724), requesting comments from the public on the proposed IHA.

The Dumbarton Bridge, located in southern San Francisco Bay (Bay), was designed in the late 1970s based on the design standards that Caltrans established in 1971. Since that time, upgraded standards have been issued, particularly Caltrans' Seismic Design Criteria of 1999, which the bridge does not meet. The Dumbarton Seismic Retrofit Project would provide a seismic upgrade of the Dumbarton Bridge to meet these current requirements. Pile driving during the project may result in harassment of harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and gray whales (*Eschrichtius robustus*) within the action area.

Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' proposed IHA notice (74 FR 63724) and a summary is provided here. To allow access to shallow water (<10 ft) piers which need to be retrofitted, a temporary trestle supported by 24-inch hollow steel piles must be installed; a barge will allow access to piers in deeper water. In addition, cofferdams will be created using sheet piles to pour concrete collars around pre-existing piles to strengthen the piers. Installation of the temporary steel and sheet piles necessitates use of mainly vibratory hammers, but an impact hammer may be used for proofing (i.e., tapping the piles into the ground to conduct load bearing tests) up to two piles each day. The entire retrofit project is expected to take three years to complete; however, installation of the temporary piles is expected to take approximately 4 months and installation of sheet piles could take one year.

Construction Process

A complete description of activities which have the potential to result in harassment to marine mammals is provided in the associated proposed IHA notice (74 FR 63724, December 4, 2009). In summary, Caltrans would construct a temporary trestle, comprised of approximately 1,000 24-in steel pipe piles, on each approach section of the bridge to gain access to shallow water piers needed to be retrofitted. No trestle will be constructed in the main channel as all work in the channel will take place from a stationary barge. In addition, cofferdams will be created around 20 piers (piers 5–15 and 32–40) by vibrating steel sheet piles into place around each pier.

Retrofitting itself involves strengthening connections between columns, pedestals, and pile caps and does not involve intense sound production. Pile driving used to construct the trestles; however, does result in elevated noise levels; therefore, this activity may impact marine mammals in the vicinity of the operating pile driver. Piles associated with the temporary trestles would only be installed in water less than 10 ft in depth and would be driven out of water whenever possible (e.g., on the mudbanks at low tide). The piles will be inserted in rows of three, with approximately 25 ft (7.6 m) between each row. Temporary trestle superstructure (decking) will then be constructed atop the support piles. An additional 16 piles will extend from the temporary work trestle to surround each existing support pier to allow construction around all sides of the pier. All temporary trestles will be less than 25 ft wide. Caltrans will install a maximum of 12 piles per day (six on each side of the Bay) using mainly a vibratory pile driving method. Vibration installation will start and continue for 5 minutes followed by an approximate 30-minute delay. The second pile will be vibrated into place for 5 minutes. Bent members and spans will then be erected, possibly taking 2 to 3 hours before the second set of piles is vibrated into place.

In total, vibratory pile driving would not occur for more than two hours per day. In order to verify load capacity of the temporary piles, approximately one in eight piles (12 percent) will be "tapped" with an impact hammer for proofing. Each pile to be tested would be tapped for a total of 10–15 seconds. No more than two piles per day would need testing. Vibratory pile driving may occur at any time during the year; however, when ESA-listed steelhead may be present (December 1st to June 14th), the re-tap or use of an impact hammer is restricted to low-tide periods only to minimize impact to salmonids.

Caltrans would also retrofit existing trestle structures on land at the east and west ends of the bridge to provide lateral strengthening. Each trestle is 600 ft long. To accomplish this, Caltrans would install of a total of 28 permanent 48-inch steel pipe piles close to the waters edge but not in the water; distance to the water is dependent upon the tidal stage. Fourteen of these piles would be placed on already paved road and fourteen would be placed into weedy ruderal vegetation enclosed by parking islands and the trestle itself. A maximum of four piles per day would be installed requiring 30–minutes

driving time. These piles would be installed between October 1 and November 30 to avoid salmon migration periods. Although these piles would be driven on land, noise from impact hammering could propagate into the water from vibration and through the air-water interface.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on December 4, 2009 (74 FR 63724). During the 30 day public comment period, the Marine Mammal Commission (Commission) provided the only comment.

Comment: The Commission states that it recommends that NMFS issue the requested authorization, provided that the monitoring and mitigation activities described in NMFS' **Federal Register** notices are carried out as described.

Response: NMFS agrees with the Commission's recommendation, and all monitoring and mitigation measured described in the previous **Federal Register** notice (74 FR 63724) are required in the current IHA.

Description of Marine Mammals in the Area of the Specified Activity

At least 35 marine mammal species can be found off the coast of California; however, few venture into the Bay and only Pacific harbor seals and California sea lions inhabit the southern portion of the Bay regularly. Gray whales are sighted in the Bay during their yearly migration, though most sightings tend to occur in the central Bay. Information on California sea lions, harbor seals, and gray whales was provided in the December 4, 2009 (74 FR 63724), **Federal Register** notice.

Potential Effects on Marine Mammals

NMFS and Caltrans have determined that exposure to noise from pile driving activities has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, and gray whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. A detailed description of potential impacts to marine mammals can be found in NMFS' December 4, 2009, **Federal Register** notice (74 FR 63724) and are summarized here.

Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to, (1) social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts.

Audible distance, or received levels (RLs) will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.*, 1995). Type and significance of marine mammal reactions to noise are likely to depend on a variety of factors including, but not limited to, the behavioral state (e.g., feeding, traveling, etc.) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, and the level of the sound relative to ambient conditions (Southall *et al.*, 2007).

Current NMFS practice regarding exposure of marine mammals to anthropogenic noise is that in order to avoid injury of marine mammals (e.g.,

PTS), cetaceans and pinnipeds should not be exposed to impulsive sounds of 180 and 190 dB rms or above, respectively. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.*, 2007). As such, Caltrans has proposed safety zones based on hydroacoustical modeling for the pile sizes and type of hammers used for the Dumbarton Bridge project and water depth. The model simulates practical spreading (i.e., 15 log R). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (e.g., impact pile driving) and

120dB rms for non-pulse noise (e.g., vibratory pile driving), but below the aforementioned injury thresholds. Estimated distances to NMFS current threshold sound levels from pile driving during the proposed action are outlined in Table 1 below (see Chapter 7 and Appendix A in the application for further detail how these distances were derived). In-air noise calculations from pile driving for this project predict that noise levels will be reduced to approximately 83 dB re: 20 microPa at 800 m. Harbor seals or California sea lions are not known to haul-out this close to the bridge (the closest haul-out is 2.7 miles away); therefore, pinnipeds at haulouts are not expected to be affected from in-air pile driving noise.

TABLE 1: MODELED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS.

Driving Location	Pile Type	Hammer Type	Calculated Distance to Criteria Thresholds			
			190 dB	180 dB	160 dB	120 dB
Water	24" steel	Impact	60 ft (18m)	220 ft (67m)	3,300 ft (1005m)	n/a
Water	24" steel	Vibratory	n/a	10 ft (3m)	n/a	3.2 miles (5.14 km)
Water	Sheet pile	Vibratory	n/a	5 ft (1.5m)	n/a	1.4 miles (2.25 kms)
Land	48" steel	Impact	n/a	100 ft (30.5 m)	1,475 ft (500m)	n/a
Land	Steel piles	Vibratory	0	0	0	150 ft (45.7 m)

NMFS anticipates reactions of marine mammals to noise will be similar to those documented during previous Caltrans' pile driving projects and those presented in scientific literature. These include short-term behavioral disturbances such as temporary avoidance behavior around the bridge, which may affect the routes of seals and sea lions or temporary cessation of foraging. Pinnipeds are not known to pup within the action area; therefore, this behavior will not be affected. Gray whales are not known to socialize, calve, or forage within the action area; therefore, these behaviors would not be interrupted. However, some avoidance by gray whales may occur. Because pile driving would not occur continuously throughout the day, any effects from pile driving will be limited. The location of piles would be limited to shallow water (<10 ft); no piles would be placed in the channel. Therefore, adequate passage space under the bridge will be available to marine mammals. No long term impacts are expected to occur.

Anticipated Effects on Marine Mammal Habitat

Marine mammal habitat will be temporarily disturbed due to pile driving activities. All steel and sheet piles would be removed once the project is complete; therefore, no additional obstacles (e.g., more piles than currently present) would be permanent. Noise from pile driving may adversely impact individual fish species which serve as marine mammal prey; however, this would be limited to fish within the immediate vicinity of the pile and is not expected to substantially reduce prey availability.

Monitoring and Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for

certain subsistence uses. The latter does not apply here as no subsistence hunting takes place in California. The following summarizes mitigation and monitoring measures set forth in the IHA.

Limited Use of Impact Hammer

As a result of ESA Section 7 consultation discussions with NMFS (to reduce impacts to ESA-listed fish species), Caltrans has agreed to drive all temporary piles with a vibratory hammer with the exception of one pile per day being "proofed" with an impact hammer, which has a higher source level. Proofing requires approximately 20 blows per pile, which equates to approximately 15–20 seconds of impact hammering per day. Additionally, Caltrans would limit proofing piles to during low tide only, essentially out-of-water on the mudbanks, when ESA-listed steelhead salmon are present (December 1 to June 14). This also serves as a mitigation measure for marine mammals.

Establishment of Safety Zone and Shut-down Requirements

Although the isopleths to the 190dB and 180dB harassment thresholds are modeled to be within 220 ft (67 m) of the impact pile hammer (see Table 1), Caltrans will initially shut down or delay commencement of pile driving should a marine mammal come within or approach 250 ft (76m) of the pile being driven. This safety zone may be modified, pending NMFS' approval based on sound source verification tests conducted upon commencement of pile driving (see *Acoustic Monitoring* below).

Although occurring on land, impact driving 48" piles with an impact hammer could attenuate to levels at or above NMFS Level A harassment threshold of 190 dB and 180 dB for pinnipeds and cetaceans, respectively, out to 100 ft (30.5 m) at high tide (see Table 1). Impact pile driving on land at low tide is not expected to emit harassment threshold levels into the water. As a conservation recommendation during ESA Section 7 consultation, NMFS has advised all pile driving on land close to the shoreline be done during low tide to reduce impacts to ESA listed fish. However, should land based pile driving occur during high tide, Caltrans will shut down should a marine mammal approach within 100 ft of land.

Soft Start to Pile Driving Activities

A "soft start" technique will be used at the beginning of each pile installation to allow any marine mammal that may be in the immediate area to leave before impact piling reaches full energy. The soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by 1-minute waiting period. The procedure will be repeated two additional times. Due to the short duration of impact pile driving (20 seconds), the general ramp-up requirement for impact pile driving does not apply as it would actually increase the duration of noise emitted into the environment and monitoring should effectively detect marine mammals within or near the designated safety zone (initially 250 ft). If any marine mammal is sighted within or approaching the safety zone prior to pile-driving, Caltrans will delay pile-driving until the animal has moved outside the safety zone and on a path away from such zone or until after 15 minutes have elapsed since the last sighting of the marine mammal.

Visual Monitoring

At least one week prior to the start of construction, the protected species observers (PSOs), trained in detection and identification of marine mammals, will conduct a survey in order to establish baseline data of marine mammal use in the project area. This effort will consist of 12 hours of monitoring during the in-water construction work window that will be used during construction (0700 to 1900 hrs).

Monitoring of the safety zone (initially 250 ft) will be conducted by PSOs 30 minutes prior to, during, and 30 minutes post all active pile driving. Pile driving will not begin until the safety zone is clear of marine mammals and will be stopped in the event that marine mammals enter the safety zone. PSOs will begin monitoring at least 30 minutes prior to the commencement of pile driving and end 30 minutes after pile driving ceases. If the time between pile driving segments is more than 30 minutes, a new 30 minute survey is unnecessary provided marine mammal monitoring continues during the interruption. Data collection will consist of: (1) a count of all pinnipeds and cetaceans sighted by species, age and sex class, where able to be determined; (2) a description of behavior (based on the Richmond Bridge Harbor Seal Survey classification system); (3) location; (4) direction of movement; (5) type of construction that is occurring; (6) any acoustic or visual reactions to specified activities; and (7) time of the observation; (8) time that pile driving begins and ends; and (9) environmental conditions such as wind speed, wind direction, visibility, temperature, tide level, current, and sea state (described using the standard Beaufort sea scale).

Monitoring of marine mammals will be conducted using high quality binoculars (e.g., Zeiss, 10 x 42 power). When possible, digital video or 35 mm still cameras will also be used to document the behavior and response of marine mammals to construction activities or other disturbances. Each monitor will have a radio for contact with other researchers or work crews if necessary, a GPS unit for determining observation location, and an electronic range finder to determine distance to marine mammals, boats, buoys and construction equipment. Most likely observers will conduct the monitoring from the Dumbarton Bridge surface or catwalks, providing a high vantage point for the observer; however, should a small vessel be used to monitor for marine mammals, PSOs will remain 50 yards from swimming pinnipeds in

accordance with NMFS marine mammal viewing guidelines (<http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>). This will prevent additional harassment to pinnipeds from the vessel.

Acoustic Monitoring

Hydroacoustic monitoring will be conducted by a qualified monitor during pile driving activities when piles are being driven in water greater than 3 feet in depth. Details will be developed during work plan preparation, but might include monitoring one pile in every set of 3 piles during installation of the temporary trestles. Sound measurements will be taken as close to the source as possible and at all modeled distances to the 190 dB, 180 dB, 160 dB (impact only), and 120 dB (vibratory only). Measurements will be taken at two depths: one in mid water column and one near the bottom but at least 3 feet above the bottom, unless obstructions such as land force a variation in depth or number of measurements. Marine mammal safety zones may be adjusted, pending NMFS' approval, according to the results of this monitoring.

Reporting

A final report summarizing all marine mammal monitoring data, including those parameters listed above, and construction activities will be submitted to NMFS 90 days after the IHA expires. An acoustic report analyzing underwater sound characteristics during pile driving shall also be submitted within 90 days of expiration of the IHA.

Negligible Impact and Small Numbers Analysis and Determination

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."

For reasons provided in greater detail in NMFS' December 4, 2009 (74 FR 63724), **Federal Register** notice, pile driving could result in harassment of harbor seals (n = 1,120), California sea lions (n = 20), and gray whales (n = 2) and would not result in more than a negligible impact on marine mammal stocks and their habitat. The number of marine mammals authorized to be taken incidental to pile driving activities is considered small when compared to the population sizes of the affected stocks (34,233; 238,000; and 18,813, respectively). That is, up to 3.3%, 0%, and 0% of the affected stocks,

respectively, may be taken by Level B harassment.

Based on the analysis contained herein on the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that pile driving associated with the Dumbarton Bridge Seismic Retrofit Project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks. There are no relevant subsistence uses of marine mammals implicated by this action; therefore, no impacts to subsistence use will occur.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area; therefore, ESA consultation on issuance of the proposed IHA was not required. However, other ESA-listed species under NMFS' jurisdiction do occur within the action area.

On January 12, 2009, NMFS received a request from the Federal Highway Administration (FHWA) to initiate consultation under section 7 of the ESA on Caltrans' proposed Dumbarton Bridge Seismic Retrofit Project as ESA-listed fish are present within the action area. NMFS issued a Biological Opinion (BiOp) on Caltran's Dumbarton Bridge Seismic Retrofit Project on August, 10, 2009. The BiOp concluded that the proposed activities were not likely to jeopardize the continued existence of Central California Coast steelhead Distinct Population Segment (DPS) or North American green sturgeon DPS and are not likely to adversely modify or destroy critical habitat for CCC steelhead DPS.

National Environmental Policy Act (NEPA)

On September 2, 2009, Caltrans released an Environmental Assessment (EA) and Finding of No Significant Impact for the Dumbarton Bridge project. For purposes of issuing an IHA, NMFS found the environmental analysis on marine mammal impacts lacking and determined further NEPA analysis was necessary. In the proposed IHA **Federal Register** notice for this action, NMFS preliminary determined a Categorical Exclusion memo was appropriate for issuing an IHA for the specified activities. However, after further consideration, NMFS prepared an EA analyzing the effects of the authorized on the human environment. Based on the analyses in the EA, NMFS

determined that issuance of the IHA would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required.

Dated: March 12, 2010.

James H. Lecky,

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

[FR Doc. 2010-6252 Filed 3-19-10; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XU03

Takes of Marine Mammals Incidental to Specified Activities; Manette Bridge Replacement in Bremerton, Washington

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Washington State Department of Transportation (WSDOT) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction and demolition activities related to the replacement of the Manette Bridge in Bremerton, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to WSDOT to incidentally harass, by Level B Harassment only, three species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than April 21, 2010.

ADDRESSES: Comments on the application should be addressed to 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. The mailbox address for providing email comments is *0648-XU03@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will

generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext 137.

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.

Authorization for incidental takings shall be granted if NMFS finds that the taking will 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 (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."

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. Section 101(a)(5)(D) establishes a 45-