

Northeast Gateway's weekly marine mammal monitoring reports submitted under the previous IHA, NMFS Permits and Conservation Division (PR1) recognized that the potential take of some marine mammals resulting from the LNG Port and Pipeline Lateral by Level B behavioral harassment likely had exceeded the original take estimates. Therefore, NMFS Northeast Regional Office (NERO) reinitiated consultation with MARAD and USCG on the construction and operation of the Northeast Gateway LNG facility. On November 30, 2007, NMFS NERO issued a revised biological opinion, reflecting the revised construction time period and including a revised ITS. This revised biological opinion concluded that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales.

However, both biological opinions only analyzed ESA-listed species for activities under the initial short construction period and during operations, and did not take into consideration potential impacts to marine mammals that could result from the subsequent LNG Port and Pipeline Lateral maintenance and repair activities. In addition, NEG also revealed that significantly more water usage and vessel operating air emissions are needed from what was originally evaluated for the LNG Port operation. NMFS PR1 has initiated consultation with NMFS NERO under section 7 of the ESA on the issuance of an IHA to NEG under section 101(a)(5)(D) of the MMPA for the proposed activities that include increased NEG Port and Algonquin Pipeline Lateral maintenance and repair and water usage for the LNG Port operations this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

#### National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final

EISs. NMFS reviewed the Final EIS and adopted it on May 4, 2007. NMFS issued a separate Record of Decision for issuance of authorizations pursuant to section 101(a)(5) of the MMPA for the construction and operation of the Northeast Gateway's LNG Port Facility in Massachusetts Bay.

Dated: November 12, 2013.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-BC69**

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Elliott Bay Seawall Project in Seattle, Washington

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

**ACTION:** Notice of issuance of a Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the City of Seattle's Department of Transportation (SDOT) for the take of nine species of marine mammals incidental to pile driving activities associated with the Elliott Bay Seawall Project (EBSP).

**DATES:** Effective from October 22, 2013, through October 21, 2014.

**ADDRESSES:** The LOA and supporting documentation are available for review on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may also be viewed, by appointment, during regular business hours at the Office of Protected Resources, National Marine Fisheries Service 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, 301-427-8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs 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. Under the MMPA, the term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill marine mammals.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified 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 in the regulations. 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."

Regulations governing the taking of harbor seals (*Phoca vitulina*), California sea lions, Steller sea lions (*Eumetopias jubatus*), harbor porpoise, Dall's porpoise, southern resident and transient killer whales, gray whales, and humpback whales, by harassment, incidental to pile driving activities in Elliott Bay, were issued on October 21, 2013 (78 FR 63396, October 24, 2013), and remain in effect until October 21, 2018. For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during pile driving activities associated with the Elliott Bay Seawall.

Pursuant to those regulations, NMFS issued an LOA, effective from October 22, 2013, through October 21, 2014, which authorizes the incidental take of the nine marine mammal species listed above that may result from construction associated with the Elliott Bay Seawall project. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) Limited impact pile driving; (2) containment of impact pile driving; (3) additional sound attenuation measures; (4) ramp-up of pile-related activities; (5) marine mammal exclusion zones; and (6) shutdown and delay procedures.

SDOT will also conduct visual monitoring and underwater acoustic monitoring for mitigation and research purposes.

Reports will be submitted to NMFS at the time of request for a renewal of the LOA, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires. This LOA will be renewed based on review of the annual monitoring report and provided that NMFS makes the required findings.

Dated: November 12, 2013.

**Helen M. Golde,**

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

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal Nos. 13-59]

#### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

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**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13-59 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 13, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*