

E. Any other scientific discipline the Secretary determines to be appropriate.

2. One (1) representative from a non-governmental wildlife/marine life, environmental, and/or conservation organization.

3. One (1) representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

4. One (1) representative from the ocean-related tourism industry.

5. One (1) representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

6. One (1) citizen-at-large representative.

Current Reserve Council Representatives and Alternates may re-apply for these vacant seats.

The Council consists of 25 members, 15 of which are non-government voting members and 10 of which are government non-voting members. The voting members are representatives of the following constituencies:

Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

**Authority:** 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: January 29, 2003.

**Jamison S. Hawkins,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 121902A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Installation of a New Floating Dock at the U.S. Coast Guard Pier, Monterey, CA

**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 an application from the United States Coast Guard (USCG) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the installation of a floating dock in Monterey, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a small take authorization to the USCG to incidentally take, by harassment, small numbers of Pacific harbor seals and California sea lions for 1 year.

**DATES:** Comments and information must be received no later than March 10, 2003.

**ADDRESSES:** Comments on the application should be addressed to James Lecky, Assistant Regional Administrator for Protected Resources, NMFS - Southwest Regional Office, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Christina Fahy, Southwest Regional Office, NMFS, (562) 980-4023.

#### 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 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.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and 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 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."

Subsection 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. The MMPA defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) 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.

Subsection 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 small numbers 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 August 16, 2002, NMFS received a letter from the USCG requesting an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*), incidental to the installation of a new floating dock.

The installation of a new floating dock is needed to provide better and safer access to an 87-ft (26.6-m) Coastal Patrol Boat, USCGC Hawksbill (Hawksbill). Currently, the Hawksbill moors at a fixed wharf which does not meet the Coast Guard's minimum standards for mooring a patrol boat. The tidal range causes severe chafing to the mooring lines and difficulties with the access gangway. The Coast Guard estimates that the cost of mooring line replacement is approximately \$10,000 a year. When the patrol boat is at the dock, a crewmember is required to be continually present to adjust mooring lines and the gangway about every 40 minutes. The Hawksbill has a 10-person crew, which is not designed to have one person awake the entire night while in port. Finally, several locally produced gangways, mounted from the wharf, have failed to give adequate access to the Hawksbill during the entire tidal cycle. The installation of a floating dock will eliminate the excessive cost to mooring lines and gangway

replacement, as well as, any unnecessary burden on the crew.

### Project Description

The project is located at 100 Lighthouse Avenue in the city and county of Monterey, California. The fixed pier extends east into Monterey Bay. The floating dock will be located on the south side near the end of the fixed wharf. The installation of the new floating dock will consist of installing a new 10 ft x 100 ft (3.05 x 30.5 m) pier, including the driving of five new piles.

The pile driving work will be completed from a welded steel barge equipped with a pedestal mounted revolving crane that has a 105-foot (32-meter) boom with a 30-ton (27,216-kg) capacity and 25-ft (7.62-m) radius. The barge will be mobilized, moved, and tended by a barge tender/work boat. The pile driving will be completed using a "DELMAG D19-32 Pile Hammer," which is a single piston internal combustion type hammer powered by diesel fuel. The pile hammer motor has a single piston, which is attached to a 2,000 lb (907 kg) weight. The weight is used to drive the piles. The pile design was completed with the existing conditions (5 ft (1.5 m) of mud over approximately 5 to 10 ft (1.5 to 3.05 m) of 500 lbs. (227 kgs) rock over decomposed granite) in mind. The new pile will consist of a 12-in (0.3-m) I-beam driven to refusal. It is anticipated that the I-beam will penetrate the mud through the rock and a firm toe will be established in the decomposed granite. This I-beam will be covered with a 24-in (0.6-m) round pile that will be driven to refusal creating a seal with the ocean floor. This second pile will be attached to the existing pier with metal braces and drained of seawater. After the pile is drained and stabilized, the 24-in (0.6 m) pile will be filled with concrete using a pump truck.

The manufacturer of the pile hammer has stated that the maximum in-air noise level under extreme driving conditions and at maximum refusal will be between 90 and 100 decibels (dB)(re 20 microPascal-m) at the source; however during this project, extreme conditions will not be encountered, and anticipated in-air noise levels should be between 60 and 85 dB. The manufacturer was not able to estimate the underwater noise level. However, acoustic monitoring of pile driving operations on the Noyo River (Fort Bragg, CA) using a similar size hammer under similar conditions (2 m (6.6 ft) water, mud bottom) and a 12-in (0.3 m) I-beam pile measured noise levels of 169 dB (dB re 1 microPascal-meter) at 100 m. The closest measurement to the

hammer was 30 m, with an underwater noise level of approximately 170 dB.

The pile driving and in water work for this project is expected to last 10 days, while the entire project should be completed within 30 days. Because the site is adjacent to a haul-out for California sea lions and near a small colony of Pacific harbor seals, the potential exists that these marine mammals may be harassed by the action; therefore, an IHA is warranted.

### Description of Habitat and Marine Mammals Affected by the Activity

A description of the Monterey Harbor and its associated marine mammals can be found in the USCG application (USCG, 2002) which is available upon request (see ADDRESSES).

#### Marine Mammals

The marine mammals under NMFS' jurisdiction likely to be found in the project area are limited to the California sea lion and the Pacific harbor seal. General information on harbor seals and California sea lions found in Central California waters can be found in Caretta et al. (2001).

#### California sea lions

The California sea lion primarily uses the Central California area to feed during the non-breeding season. Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

California sea lions are regularly observed in the Monterey Harbor area in the autumn, winter, and into the early spring. They regularly haul out on the Coast Guard Jetty. Based on ground surveys conducted from June 1997 through October 1999, an average of between 143.3 (standard deviation (SD) = 51.5) and 425 (SD=130.5) sea lions hauled out on the jetty during the autumn. Mean number of sea lions observed during the winter season (1997-98) was 628 (SD=238.5) animals (Weise 2000). During ground counts from 1997 to 1999, Weise (2000) estimated that approximately 74 percent (SD=18.1 percent) of the sea lions observed were juveniles, 14.9 percent were adults (SD=15.3 percent), and 10.5 percent (SD=6.7 percent) were sub-adult males or females. No pupping occurs in the project area.

#### Harbor seals

A small number of harbor seals are also expected to be found in the project area. Harbor seals are distributed throughout the west coast of California. In general, they do not migrate, preferring instead to forage within several miles of their haul-out sites. In Monterey Harbor, harbor seals haul out on a rocky outcropping located approximately 300 m (984 ft) inshore of the proposed project site and approximately 100 m (328 ft) from a small beach and the Monterey Fisherman's Wharf. Based on surveys conducted in the Monterey Harbor, less than 20 harbor seals are expected to be found on this site within the harbor. The presence of all size classes of animals are possible. Harbor seals do not pup on this haulout, although several pupping sites are located around the Monterey Peninsula within 3 to 20 km ( 1.9 to 12.4 mi) of the project site.

### Potential Effects on Marine Mammals

It is possible that California sea lions and harbor seals swimming in the vicinity of the project during pile driving may be subject to elevated sound pressure levels that could produce a temporary shift in the animal's hearing threshold. Construction and human activity around the site could also potentially result in behavioral changes in nearby pinnipeds. California sea lions and harbor seals may temporarily cease normal activities, such as feeding, or pop their heads up above water in response to the noise. They may also be curious and choose to investigate the project site. However, existing evidence shows that most marine mammals tend to avoid loud noises and will likely move away from the project site (Richardson et al., 1995). Disturbance from these activities is expected to have a short-term negligible impact to a number of sea lions and harbor seals. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the installation of the floating dock, the incidental harassment of California sea lions is expected to occur on a daily basis upon initiation of the pile driving. Sea lions are also likely to be initially harassed by the barge tender moving the barge into place. If the animals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular hauling out behavior. The number of sea lions disturbed will vary daily, but animals in the water near the project

site or hauled out closest to the project site are more likely to be disturbed than animals hauled out at the farther end of the jetty. Based on past ground surveys, the number of California sea lions that may potentially be harassed could range from 200 to 400, and possibly as many as 600 animals may move each day as a result of the project activities.

Whether harbor seals will react to construction noise and associated activity and move away from the rock outcropping during construction activities (especially pile driving) is unknown. While seals are generally thought to be less tolerant of human activities than sea lions, the location of their haulout from the project site may be far enough away that disturbances may be less likely. Seals that are swimming near the project site may be harassed during construction activity, especially pile driving, and may swim away from the immediate area.

#### Potential Effects on Habitat

The activity will take place on a part of the Monterey USCG pier that is not used directly by any marine mammal species. Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the rock jetty at the end of the USCG pier by California sea lions and perhaps of the nearby rocky outcropping by Pacific harbor seals while work is in progress or until pinnipeds acclimate to the disturbance. This will not likely result in any permanent reduction in the number of sea lions or seals at these haulouts. Sea lions are regularly disturbed by boats and human activities in Monterey Harbor. In addition, approximately 4 to 5 m (13.2 to 16.4 ft) above the harbor seal haul-out, there is a busy bike path and pedestrian walkway. Seals are frequently disturbed year-round due to their proximity to the bike path, particularly during the daytime. The abandonment of either haulout is not anticipated since existing foot traffic, commercial and recreational boating, and human activity currently occurring within the area have not caused long-term abandonment.

Therefore, other than the potential, short-term abandonment by California sea lions and harbor seals of part of their existing haulouts in Monterey Harbor during floating dock installation, no impacts on the habitat or food sources of marine mammals are likely from this project.

#### Mitigation

Several mitigation measures to reduce the potential for harassment from installation of the floating dock will be implemented by USCG as part of their

activity. General restrictions include: the work will be performed during daylight hours only so that potential impacts can be detected more easily and steps can be taken to avoid them; shouting, loud noises, fast movements, and other activities that would disturb the haul-out sites will be minimized (considering human safety concerns foremost); the number of people and the amount of equipment on the USCG pier in close proximity to the sea lion haulout will be restricted to the minimum required to effectively perform the work; all equipment will be kept on the west side of the USCG pier and, as much as possible, out of sight of the sea lion haulout site; a NMFS-approved biological monitor will be on site at all times during the project operations to monitor marine mammal disturbances and to advise personnel on ways to minimize or avoid disturbances.

General restrictions during pile driving will include: no piles will be driven between the hours of 5 pm and 8 am. Based on a recommendation from NMFS, the USCG will avoid exposing pinnipeds to unsafe noise levels (greater than 190 dB re 1 microPascal-m). Given the acoustic monitoring from pile driving exercises for the Noyo River Bridge, the USCG will establish an initial safety zone of 50 m (164 ft) around the pile-driving site. The marine mammal monitor will scan the safety zone continuously for 5 minutes just prior to, and during, pile driving to determine whether marine mammals are present. Pile driving will not begin until the safety zone is clear. If an animal is in the safety zone before initiation of the pile driving activity on any given work day, operations will be delayed until the animal has moved a safe distance away. If an animal enters the safety zone while pile driving is occurring, operations will be stopped immediately until the animal has moved beyond the range of the safety zone. In consultation with NMFS, the safety zone may be increased if animals beyond 50 m (164 ft) show excessive behavioral changes in response to pile driving operations. If pile driving stops for less than 45 minutes, another 5-minute scan will not be necessary; if it stops for longer than 45 minutes, another scan will be performed.

In order to provide further protection to pinnipeds hauled out near the project area, the USCG also proposes to "dry fire" the hammer prior to operating at full capacity. A "dry fire" occurs when the hammer is raised and dropped with no compression of the pistons which produces approximately 50 percent of the maximum in-air noise level, or 45–55 dB (dB re 20 microPascal-meter).

This dry-firing should allow pinnipeds in the area to voluntarily move from the area and should expose fewer animals to loud sounds both underwater and above water.

#### Monitoring

NMFS will require USCG to monitor the impact of the floating dock installation activities on California sea lions and harbor seals in Monterey Harbor. Monitoring will be conducted by one or more NMFS-approved monitors.

In general, the marine mammal monitor(s) will record the date, time of arrival and departure of the monitor and work crew. The monitor will also conduct counts of sea lions on the jetty and counts of pinnipeds in the water near the project site every hour, commencing 1 hour before the start of project activity each day and ending 15 minutes after all project activities have ceased. Data on size classes and sex (when possible) of sea lions on the jetty will be collected. Counts of harbor seals will be obtained at the beginning and the end of each work day. If possible, data on size class and sex of animals will be collected. The monitor(s) will also collect information on disturbance reactions, including the number of animals disturbed, the source (including type, location, timing, and duration of disturbance). The monitor will also record environmental conditions, including date, time, cloud cover, visibility, wind direction and velocity, swell direction and height, and tides.

During pile driving operations, the monitor will monitor the 50-meter safety zone, as described above (see Mitigation). The safety zone will be marked with temporary buoys in order to facilitate monitoring efforts.

#### Reporting

The USCG will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of California sea lions and harbor seals that may have been disturbed as a result of floating dock installation activities. These reports will include data collected during daily monitoring.

A draft final report must be submitted to the Regional Administrator within 60 days after the conclusion of the project. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

**Endangered Species Act (ESA)**

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA for this project. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

**National Environmental Policy Act (NEPA)**

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995 that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this proposed action, including pile driving, will use pile driving equipment that is less intense and will, therefore, have a lower impact on the marine environment than pile driving equipment used in other surveys for which EAs and resulting FONSI's have been prepared previously. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and, therefore, a new EA will not be prepared.

**Preliminary Conclusions**

NMFS has preliminarily determined that the short-term impact of the floating dock installation, as described in this document and in USCG (2002), should result, at worst, in the temporary modification in behavior by California sea lions and Pacific harbor seals. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

**Proposed Authorization**

NMFS proposes to issue an IHA to the USCG for the potential harassment of small numbers of harbor seals and California sea lions incidental to floating dock installation, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and California sea lions and

will have no more than a negligible impact on these marine mammal stocks.

**Information Solicited**

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

Dated: January 31, 2003.

**Laurie K. Allen,**

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

[FR Doc. 03-2953 Filed 2-5-03; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 012903F]

**Mid-Atlantic Fishery Management Council; Public Meetings**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (Council) Demersal Species Committee and the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, will hold a public meeting.  
**DATES:** The meeting will be held on Tuesday, February 25, 2003, from 1 p.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the Doubletree Hotel, Crystal City, 300 Army Navy Drive, Arlington, VA; telephone: 703-416-4100 or 800-222-8733.

*Council address:* Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302-674-2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:** The main agenda item for this meeting is to discuss 2003 planning priorities for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues

arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) least 5 days prior to the meeting date.

Dated: January 29, 2003.

**Theophilus R. Brainerd,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03-2807 Filed 2-5-03; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 012903E]

**Mid-Atlantic Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (MAFMC) Atlantic Mackerel, Squid, and Butterfish Committee, together with Industry Advisors, will hold a public meeting.

**DATES:** The meeting will be held on Thursday, February 20, 2003, from 10 a.m. until 4 p.m.

**ADDRESSES:** This meeting will be held at the Renaissance Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610-521-8954.

*Council address:* Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to discuss possible management measures to address over-capacity in the *Loligo* fishery including additional limited entry provisions, seasonal allocation of quota, trip limits, and individual fishing quotas for inclusion in Amendment 10