

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****RIN 0648–XV65****Marine Mammals; File No. 1100–1849**

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

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

**SUMMARY:** Notice is hereby given that Shane Moore, Moore & Moore Films, Box 2980, 1203 Melody Creek Lane, Jackson, WY 83001 has been issued an amendment to Permit No. 1100–1849.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following offices:

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)713–0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubbard or Amy Hapeman, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On September 29, 2009, notice was published in the *Federal Register* (74 FR 49858) that an amendment to Permit No. 1100–1849 had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 1100–1849, issued March 22, 2007 (72 FR 14525), authorizes the permit holder to take 10 killer whales (*Orcinus orca*) of the Eastern North Pacific Transient Stock, 10 gray whales (*Eschrichtius robustus*), and 10 minke whales (*Balaenoptera acutorostrata*) by close approach for filming in the Gulf of Alaska and Bering Sea between April 1 and August 31 of each year. The original permit was valid through March 31, 2010. The amendment extends the permit for two years until March 31, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

Dated: April 5, 2010.

**Tammy C. Adams,**

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

[FR Doc. 2010–8137 Filed 4–8–10; 8:45 am]

**BILLING CODE 3510–22–S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****RIN 0648–XS24****Small Takes of Marine Mammals Incidental to Specified Activities; Antioch 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 Antioch 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 May 4, 2009, NMFS received a request from Caltrans to harass marine mammals incidental to the Antioch Bridge Seismic Retrofit Project. In accordance with the MMPA, NMFS

issued a notice in the **Federal Register** on December 21, 2009 (74 FR 67856), requesting comments from the public on the proposed IHA.

The Antioch Bridge 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, of which the bridge does not meet. The retrofit project will provide a seismic upgrade of the Antioch Bridge to meet these current requirements. Pile driving during the project may result in harassment of harbor seals (*Phoca vitulina richardii*) and California sea lions (*Zalophus californianus*) within the action area.

#### Description of the Specified Activity

The Antioch Bridge is located 5.4 miles east of the confluence of the Sacramento and San Joaquin Rivers, is 9,437-ft long, accommodates one lane of traffic in either direction, and includes narrow accommodation for bicyclists and pedestrians. Proposed retrofit elements to the bridge include installation of steel bracings; replacement of the existing elastometric bearings with isolation bearings; and removal of the existing curtain walls and retrofit of all the columns within the slab span structure. To accomplish this, a temporary trestle will be built to allow access to the piers in shallow water (out to Pier 11). The temporary marine trestle will be constructed from the south shore of the San Joaquin River, out approximately 910-ft into the river along the west side of the existing bridge structure. This is where water depths are less than 10-ft below mean lower-low water (MLLW) and are too shallow to be accessed by barge. The trestle will be 25 ft wide with piles spaced 25-ft apart. It will be constructed using approximately 160 24-in steel hollow shell piles, which will be installed with a vibratory hammer. Vibrating a single 24-in pile into place requires, at the most, ten minutes of noise generating vibration. In addition, Caltrans will "proof" or test one pile per day using an impact hammer to ensure the pile can sustain the required load. Proofing the piles will require approximately 20–40 blows per day, generating elevated sound pressure for about one minute per day. The entire project is expected to take 2.5 years to

complete; installation of the temporary piles is expected to take approximately 4 months and is planned for August 1–November 1, 2010, although this may be delayed due to construction scheduling. At the completion of the project, the trestle and all associated piles will be removed. All pile driving will be conducted during daylight hours only.

#### Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on December 21, 2009 (74 FR 67856). 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** notice 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 67856) 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 eastern arm of the Bay over which the Antioch Bridge stretches. Both species have been known to sporadically venture into estuaries and rivers in search of food, and the California Department of Fish and Game (CDFG) indicates that the ranges of these two species encompass the region of the Delta in which the project occurs. Detailed information on California sea lions and harbor seals was provided in the December 21, 2009 (74 FR 67856), **Federal Register** notice.

#### Potential Effects on Marine Mammals

NMFS and Caltrans have determined that pile driving has the potential to result in behavioral harassment of harbor seals and California sea lions that may be swimming or foraging in the project vicinity while pile driving is being conducted. A detailed description of potential impacts to marine mammals can be found in NMFS' proposed IHA

**Federal Register** notice (December 21, 2009, 74 FR 67856) 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 be dependent 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), 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). 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 120 dB rms for non-pulse noise (e.g., vibratory pile driving), but below the aforementioned injury thresholds. Harbor seals and California sea lions are not known to haul-out close to the bridge; therefore, impacts from in-air pile driving noise are not applicable here.

Estimated distances to NMFS current threshold sound levels from pile driving during the proposed action were derived using a practical spreading model (15 log R) and are outlined in Table 1 below. Distances to these thresholds will undergo acoustic sound source verification tests upon commencement of pile driving and may be adjusted accordingly.

TABLE 1: UNDERWATER DISTANCES TO NMFS HARASSMENT THRESHOLD LEVELS DURING PILE DRIVING.

Pile Type	Hammer Type	Sound Levels (rms)		
		190 dB	160 dB	120 dB
24" steel	Impact	16.8 m (55 ft)	1,000 m (3,280 ft)	n/a
24" steel	Vibratory	n/a	n/a	16.4 km (10.2 miles)

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 river's 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 immediately within the 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.

#### *Establishment of Safety Zone and Shut Down Requirements*

The isopleth for the Level A harassment (injury) threshold (190 dB re: 1 microPa) is modeled to be within 55 ft (16.8 m) of the impact pile hammer; however, Caltrans has proposed to delay impact pile driving should a marine mammal come within or approach 100 ft (30 m) of the pile being driven. Vibratory pile driving does not present source levels at or above NMFS' harassment threshold for Level A harassment (190 dB re 1 microPa); however, Caltrans will also employ a 30 m (100 ft) safety zone to protect animals against physical harm from the equipment. Sound source verification tests will be conducted upon commencement of pile driving to verify acoustic models (see Acoustic Monitoring below).

#### *Limited Use of Impact Hammer*

As a result of Endangered Species Act (ESA) section 7 consultation discussions with NMFS, Caltrans has agreed to drive all temporary piles with a vibratory hammer, to reduce impacts to listed fish, with the exception of one pile per day being "proofed" with an impact hammer. Proofing requires approximately 20–40 blows per pile, which equates to approximately one minute of impact hammering per day. This action would also serve to reduce impacts to marine mammals.

#### *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 vibratory 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 would 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 of 100 ft (30 m). If any marine mammal is sighted within or approaching this shut down zone prior to pile-driving, Caltrans will delay pile-driving until the animal has moved outside and on a path away from such zone or after 15 minutes have elapsed since the last sighting of the marine mammal.

#### *Visual Monitoring*

Safety zone monitoring will be conducted during all active pile driving. Monitoring of the 100 ft (30 m) safety zone will be conducted by qualified, NMFS-approved, protected species observers (PSOs). Impact pile driving will not begin until the 100 ft safety zone is clear of marine mammals and will be stopped in the event that marine mammals enter the safety zone. For all pile driving, PSOs will monitor for marine mammals at least 30 minutes prior to, during, and 30 minutes post in-water pile driving. Monitoring could be conducted from small boats, as observation from a higher vantage point may not be practical. 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. If a land based monitoring point can be found, PSOs would be stationed here. Observations will be made with binoculars during daylight hours. 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).

#### *Acoustic Monitoring*

Monitors will be present to conduct hydro-acoustic monitoring to empirically establish the 190 dB RMS (impulse) safety zone and behavioral harassment zones. Field measurements of sound pressure levels will be recorded and analyzed. A more detailed marine mammal monitoring plan and hydro-acoustic monitoring plan will be made by the monitoring contractor prior to the start of the Antioch Bridge seismic retrofit.

#### **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 detail in NMFS' December 4, 2009 (74 FR 67856), **Federal Register** notice, pile driving could result in harassment of 10 harbor seals and 10 California sea lions or approximately zero percent of each population. 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 and 238,000, respectively).

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 Antioch 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, 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 26, 2009, NMFS received a request from the Federal Highway Administration (FHWA) to initiate consultation under section 7 of the ESA on Caltrans' proposed Antioch Bridge Seismic Retrofit Project as ESA-listed fish are present within the action area. NMFS issued a Biological Opinion (BiOp) on Caltran's Antioch Bridge Seismic Retrofit Project on August 13, 2009. The BiOp concluded that the proposed activities are not likely to jeopardize the continued existence of endangered Sacramento River Winter-run Chinook salmon, threatened CV Spring-run Chinook salmon, threatened CV steelhead, or threatened Southern DPS of North American green sturgeon, and is not likely to destroy or adversely modify designated or proposed critical habitat for these species.

#### **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 permitted activities on the human environment. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required.

Dated: April 1, 2010.

**James H. Lecky,**

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

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**BILLING CODE 3510-22-S**

#### **COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

##### **Procurement List Addition**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds to the Procurement List products to be furnished by nonprofit agency employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* 5/10/2010.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Patricia Briscoe: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

##### **SUPPLEMENTARY INFORMATION:**

##### **Addition**

On 2/12/2010 (75 FR 6869-6870), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

##### **Regulatory Flexibility Act Certification**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products proposed for addition to the Procurement List.