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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XS24**

**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; proposed incidental harassment authorization; request for comments.

**SUMMARY:** NMFS has received an application from the California Department of Transportation (Caltrans) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to the Antioch Bridge Seismic Retrofit Project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Caltrans to incidentally harass, by Level B Harassment only, 10 harbor seals (*Phoca vitulina*) and 10 California sea lions (*Zalophus californianus*) during the specified activity.

**DATES:** Comments and information must be received no later than January 20, 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 [PR1.0648-XS24@noaa.gov](mailto:PR1.0648-XS24@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:** Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713-2289, ext 151.

**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-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.

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].

**Summary of Request**

On May 5, 2009, NMFS received an application from Caltrans for the taking, by Level B harassment, of marine mammals incidental to retrofitting the Antioch Bridge, located 5.4 miles east of the confluence of the Sacramento and San Joaquin Rivers. To access shallow water piers, a temporary support trestle would be installed using a pile driver hammer. Because pile driving has the potential to result in behavioral harassment to marine mammals located in the action area, an authorization under section 101(a)(5)(D) of the MMPA is warranted.

**Description of the Specified Activity**

The Antioch Bridge, completed in 1978, was designed based on seismic standards that the Caltrans established in 1971. After the Loma Prieta in 1989, Caltrans implemented the Seismic Retrofit Program. After the Northridge Earthquake of 1994, Caltrans implemented Phase Two of the Program, which required seven state-owned toll bridges, including the Antioch Bridge, to be retrofitted. The Antioch Seismic

Retrofit Project would provide a seismic upgrade of the Antioch Bridge; the upgrade would meet the current requirements.

The Antioch Bridge 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 would be built to allow access to the piers in shallow water (out to Pier 11). The temporary marine trestle would 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 would require approximately 20 blows per day, generating sound pressure for about one minute per day. The entire project is expected to take 2.5 years to complete; however, installation of the temporary piles is expected to take approximately 4 months and is planned for August 1- November 1, 2010. At the completion of the project, the trestle and all piles would be removed. All pile driving would be conducted during daylight hours only.

Some components of the project, (e.g., creation of access roads; installation of bracings) would not involve in-water work and therefore are not expected to harass marine mammals. In-air noise from these activities is not a concern in this case as pinnipeds are not known to haul-out near the bridge (see Affected Environment). Therefore, NMFS has preliminarily determined that these specified activities do not warrant an authorization and they will not be discussed further.

#### Action Area

The Antioch Bridge project area includes Caltrans right-of-way (ROW) and temporary construction easements. This area covers approximately 62 acres

(ac), including 7.5 ac on the south shore of the San Joaquin River in Contra Costa County, 21 ac of the San Joaquin River, and 33.5 ac on Sherman Island in Sacramento County. On the south side of the river, vegetation is primarily park landscaping, with weedy ruderal vegetation under the existing bridge. A small fringe wetland is found along the San Joaquin River around the bridge.

The San Joaquin River is relatively shallow on the south side, with depths of less than 10-ft out to Pier 11. The main channel extends between Piers 12 and 20, with deep water passage between Piers 19 and 20, near the northern shore. On the north side of the river, Sherman Island supports irrigated pasture and irrigated crops, as well as an area of ruderal vegetation in fallow fields. Mayberry Slough and an irrigation canal cross the area in the vicinity of Piers 39 and 40, and Pier 32, respectively. The waters around the bridge are not heavily used by marine mammals but do provide some foraging habitat for certain pinniped species.

#### Description of Marine Mammals in the Area of the Specified Activity

The project area lies outside the range of most marine mammal species. The Guadalupe fur seal (*Arctocephalus townsendi*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), and northern (Stellar) sea lion (*Eumetopias jubatus*) have distributions that extend northward along the California coast but their ranges do not extend into the bays and estuaries of the Delta. There have been two documented occurrences of humpback whales (*Megaptera novaeangliae*) traveling up the Sacramento River, but these occurrences do not represent the normal behavior patterns of the species. Occurrences of humpback whales have never been documented and are not anticipated at the bridge location.

The only marine mammal species which may be affected by the project are the California sea lion and Pacific harbor seal. 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 encompasses the region of the Delta in which the project occurs.

#### California Sea Lion

The California sea lion is the most abundant marine mammal in California with an estimated population of 50,000 along the entire California coast and islands. The entire US population has been estimated at 238,000 in 2005, and

growing at a rate of approximately 6.52 % annually between 1975 and 2005 (NMFS, 2007). The California stock of sea lions is not listed as depleted under the MMPA or threatened or endangered under the MMPA.

California sea lions exhibit seasonal migration patterns organized around their breeding patterns. The sea lions breed in rookeries in the Channel Islands and Mexico from May through August. Females tend to remain close to the rookeries throughout the year, while males migrate north after the breeding season in the late summer, and then migrate back south to the breeding grounds in the spring (CDFG, 1990).

Sea lions feed on fish and cephalopods, including Pacific whiting, rockfish, anchovy, hake, flat-fish, small sharks, squid, and octopus. Sea lions are often solitary feeders; however they also hunt in groups which can vary in size according to the abundance of prey. Within the action area; sea lions are often solitary.

Main breeding rookeries are found in the Channel Islands. Males haul out on Farallon Island and Ano Nuevo Island throughout the year. Sea lions can be found at sea from the surf zone out to near shore and pelagic waters. On land, the sea lions are found resting and breeding in groups of various sizes, and haul out on rocky surfaces and outcroppings and beaches, as well as manmade structures such as jetties and buoys. Sea lions prefer haulout sites and rookeries near abundant food supplies, with easy access to water; although sea lions occasionally travel up rivers and bays in search of food.

No known haulout sites occur in the vicinity of the bridge. During the designated August 1 to November 30 work window for installing the temporary marine trestle, California sea lions will likely be absent during August, as they are still in the breeding season and will be located further south, in the Channel Islands (CDFG 1990). Beginning in September, the likelihood of sea lions foraging in the San Joaquin River Delta increases, as males are beginning to return from the Channel Island rookeries at this time (CDFG 1990).

#### Harbor Seals

Harbor seals are the most widely distributed pinniped species, occurring on both sides of the northern Pacific and Atlantic Ocean (NMFS 2005). The Pacific harbor seal ranges from Baja Mexico to the Aleutian Islands, and occurs along the entire length of the California coast. Harbor seal populations in California were estimated at 34,233 in 2005, and have

been growing at an estimated rate of 3.5 % from 1982 to 1995 (NMFS 2005). Harbor seals are not listed as depleted under the MMPA or threatened or endangered under the MMPA.

The breeding season lasts from March through June each year, with peak births occurring between April and May. Females give birth to one pup each year, and mate again shortly after weaning. Harbor seals are not territorial on land, but do maintain spacing between individuals in haul outs.

Harbor seals feed on fish, crustaceans and some cephalopods. Foraging occurs in shallow littoral waters, and common prey items include flounder, sole, hake, codfish, sculpin, anchovy and herring. Harbor seals are typically solitary while foraging, although small groups have been observed. Seals spotted within the action area are usually solitary.

Unlike California sea lions, harbor seals are rarely found in pelagic waters and typically stay within the tidal and intertidal zones. On land, harbor seals haul out on rocky outcrops, mudflats, sandbars and sandy beaches with unrestricted access to water and with minimal human presence. Harbor seals are non-migratory, but will make short to-moderate distance journeys for feeding and breeding needs, including venturing into estuaries and rivers (CDFG 2005).

The area of the Delta where the project occurs falls within the limits of the range of harbor seals; however, no known haulout sites have been identified in the vicinity of the bridge. Potential occurrences of harbor seals would be limited to individuals in search of food upstream into the San Joaquin River.

#### Potential Effects on Marine Mammals

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water. Sound levels are compared to a reference sound pressure to identify the medium. For air and water, these reference pressures are “re 20 microPa” and “re 1 microPa”, respectively. Sound is generally characterized by several variables, including frequency and sound level. Frequency describes the sound’s pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound’s loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10-dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. However, it should be noted that humans perceive a 10 dB

increase in sound level as only a doubling of sound loudness, and a 10 dB decrease in sound level as a halving of sound loudness.

Marine mammals use sound for vital life functions, and introducing sound into their environment could be disrupting to those behaviors. Sound (hearing and vocalization/ echolocation) serves 4 main functions for marine mammals. These functions include (1) providing information about their environment; (2) communication; (3) enabling remote detection of prey; and (4) enabling detection of predators. Noise from pile driving may affect marine mammals at a level which could cause behavioral harassment. The distances to which these sounds are audible depend on source levels, ambient noise levels, and sensitivity of the receptor (Richardson *et al.* 1995). Mitigation measures (see Mitigation section) and the low source level of vibratory pile driving (the main method used to install piles) are expected to prevent injurious exposure.

Pinnipeds produce a wide range of hearing social signals, most occurring at relatively low frequencies (Southall *et al.*, 2007), suggesting hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and in the water suggesting they possess amphibious hearing and have difference hearing capabilities dependant upon the media (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies in water than in air. In-water, pinnipeds can hear frequencies from 75 Hz to 75kHz. In-air, the lower limit remains at 75 Hz but the highest audible frequencies are only around 30kHz (Southall, *et al.*, 2007).

#### Hearing Impairment

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: temporary threshold shift and permanent threshold shift. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. There is no empirical data for onset of PTS in any marine mammal, and therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the threshold is reduced by  $\geq 40$  dB (i.e., 40 dB of TTS). Due to proposed mitigation measures and source levels, NMFS does

not expect that marine mammals will be exposed to levels that could elicit PTS and therefore it will not be discussed further.

#### Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (i.e., baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Sound exposures that elicit TTS in pinnipeds underwater have been measured in harbor seals, California sea lions, and northern elephant seals from broadband or octaveband (OBN) non-pulse noise ranging from approximately 12 minutes to several hours (Kastak and Schusterman, 1996; Finneran *et al.*, 2003; Kastak *et al.*, 1999; Kastak *et al.*, 2005). Collectively, Kastak *et al.* (2005) analyzed these data to indicate that in the harbor seal, a TTS of ca. 6 dB occurred with 25 minute exposure to 2.5 kHz OBN with SPL of 152 dB re:1 microPa; the California sea lion showed TTS-onset at 174 dB re: 1 microPa (as summarized in Southall *et al.*, 2007). Underwater TTS experiments involving exposure to pulse noise is limited to a single study. Finneran *et al.* (2003) found no measurable TTS when two California sea lions were exposed to sounds up to 183 dB re: 1 microPa (peak-to-peak).

#### Behavioral Impacts

The source of underwater noise during construction would be pile driving to construct the temporary work trestle. There are limited data available on the effects of non-pulse noise on pinnipeds in-water; however, field and captive studies to date collectively suggest that pinnipeds do not strongly react to exposures between 90–140 dB re: 1 microPa. Jacobs and Terhune (2002) observed wild harbor seal

reactions to acoustic harassment devices (ADH) around nine sites. Seals came within 44 m of the active ADH and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB re: 1 microPa. In a captive study, a group of seals were collectively subjected to non-pulse sounds (e.g., vibratory pile driving) at 8–16 kHz (Kastelein, 2006). Exposures between 80–107 dB re: 1 microPa did not induce strong behavioral responses; however, a single observation at 100–110 dB re: 1 microPa indicated an avoidance response at this level. The group returned to baseline conditions following exposure (i.e., no long term impact). Southall *et al.* (2007) notes contextual differences between these two studies noting that the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging subjects may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items. Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse noise (e.g., impact pile driving) and concluded that exposures to 150 to 180 dB re: 1 microPa generally have limited potential to induce avoidance behavior.

Seals and sea lions exposed to threshold level sounds (120 dB for non-pulse; 160 dB for pulse) may elicit temporary avoidance behavior around the bridge, which may affect movement

of seals under the bridge or temporarily inhibit them from foraging near the bridge. However, limiting pile driving to one to hours per day would allow for minimal disruption of harbor seal foraging or use of dispersal habitat. Very few sea lions use the South Bay for foraging and no known sea lion haul-outs exist in the South Bay; therefore, impacts are expected to be equally minimal than those of harbor seals.

Based on these studies, NMFS has preliminarily determined that seals and sea lions exposed to threshold level sounds (120 dB for non-pulse; 160 dB for pulse) may elicit temporary pinniped avoidance behavior. The most likely impact to pinnipeds from the pile installation would be temporary disruption of feeding patterns as individual sea lions or harbor seals pass through the area in pursuit of food. However, limiting pile driving to one to two hours per day would allow for minimal disruption of foraging or use of dispersal habitat. No haulouts exist and no pupping or breeding is known to occur on land near the bridge; therefore, no impacts to reproduction or interruption of mom/pup bonding or nursing are anticipated. Temporary hearing loss is possible for those pinnipeds that enter into zone of Level B harassment, but permanent hearing loss or other harm is not anticipated due to monitoring and mitigation efforts, as described below) and low source level of pile driving.

### Estimated Take by Incidental Harassment

NMFS typically uses threshold sound levels to estimate takes and establish appropriate mitigation. 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 spherical spreading and uses a transmission constant of 15. Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160dB 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 thresholds. These levels are considered precautionary. Estimated distances to NMFS' current harassment threshold levels from pile driving during the proposed action are outlined in Table 1 below.

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<br>Vibratory | 16.8 m (55 ft)     | 1,000 m (3,280 ft) | n/a                  |
| 24" steel |                     | n/a                | n/a                | 16.4 km (10.2 miles) |

For the impact portion of the trestle pile installation, a source level of 194 dB RMS at 35–ft was used to calculate NMFS level harassment distances. Based on this source level, models estimated that pile installation for the Project could generate sound levels above 190 dB that would extend out about 55–ft from the pile. The calculated distance for sounds above 160 dB (Level B harassment) is approximately 3,300–ft. For the vibratory portion of the trestle pile installation, a source level of 166 dB RMS at 35–ft is assumed; therefore, sound levels above 190 dB would not be reached during the installation of piles by vibratory hammer. The calculated distance for sounds above 120 dB (Level

B harassment threshold for non-impulse sounds) would be around 10.2 miles.

Current NMFS practice regarding in-air exposure of pinnipeds to noise generated from human activity is that the onset of Level B harassment for harbor seals and all other pinnipeds is 90 dB<sub>rms</sub> and 100 dB<sub>rms</sub> re: 20 microPa, respectively. In-air noise calculations from pile driving for the Dumbarton Bridge project, which uses the same size and type of piles and hammers, predict that noise levels will be reduced to approximately 83 dB<sub>rms</sub> re: 20 microPa at 800m. Harbor seals or California sea lions are not known to haul-out anywhere near the Antioch Bridge; therefore, in-air noise is not considered to contribute to harassment for this project.

It is difficult to estimate the number of California sea lions and Pacific harbor seals that could be affected by the installation of piles for the temporary marine trestle, as pinnipeds only sporadically venture into the project area in pursuit of food. Due to the project location lying at the extreme margins of these species' ranges, the number of individual pinnipeds expected to be encountered is very low. Through consultation with NMFS' Southeast Regional Office, Caltrans requests the take of 10 California seal lions. These individuals would most likely be adult males, as the females and pups tend to remain close to the breeding rookeries. Similarly, Caltrans requests, and NMFS' proposes, authorization to take 10 individual

harbor seals incidental to pile driving activities; also likely males in pursuit of food.

### Proposed Mitigation

Caltrans has proposed mitigation both in their application and supplemental communication to reduce impact to environmental resources. Measures set in place to protect birds and fish (e.g., using the vibratory hammer at all times except for load bearing tests) also protect marine mammals. The following proposed mitigation measures are designed to eliminate potential for injury and reduce Level B harassment of marine mammals.

#### *Establishment of safety and zones and shut down requirements*

Vibratory pile driving does not elicit source levels at or above NMFS' harassment threshold for Level A harassment, therefore, no required shut down zones would be established for vibratory pile driving. The isopleth for the Level A harassment threshold (190 dB) is modeled to be within 55 ft (16.8 m) of the impact pile hammer (see Table 1); 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; further reducing the risk of Level A harassment.

#### *Limited use of impact hammer*

As a result of 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 15–20 seconds 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 would 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 would be repeated two additional times. Due to the short duration of impact pile driving (20 seconds), the traditional 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 proposed impact pile driving shut down of 100 ft (30 m). If any marine mammal is sighted within or approaching this shut down zone prior to pile-driving, Caltrans would 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.

### Marine Mammal Monitoring

Safety zone monitoring would be conducted during all active pile driving. Monitoring of the 100 ft (30 m) safety zone would be conducted by qualified, NMFS approved marine mammal observers (MMOs). Impact pile driving would not begin until the 100 ft safety zone is clear of marine mammals and would be stopped in the event that marine mammals enter the safety zone. For all pile driving, MMOs would begin monitoring at least 30 minutes prior to the commencement of pile driving and could conduct monitoring from small boats, as observation from a higher vantage point may not be practical. MMOs would remain 50 yards from swimming pinnipeds in accordance with NMFS marine mammal viewing guidelines (<http://swr.nmfs.noaa.gov/psd/rookeryhaulouts/CASEALVIEWBROCHURE.pdf>). This would prevent additional harassment to pinnipeds from the vessel. If a land based monitoring point can be found, MMOs would be stationed here. Observations would be made with binoculars during daylight hours. Data on all observed marine mammals would be recorded and include information such as species, numbers, time of observation, location, and behavior.

### Acoustic Monitoring

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

### Reporting

NMFS would be notified 2 weeks prior to the initiation of proposed work. Weekly monitoring reports would be sent to NMFS and include information such as species, numbers, time of observation, location, and behavior. Additionally, the report would include an assessment of the number of California sea lions and harbor seals that

may have been harassed as a result of pile driving activity, based on direct observation of sea lions and harbor seals observed passing through the area. Should the acoustic monitoring reveal noise level isopleths different than those described here, a modification to the safety zone reflecting those data would occur.

### Preliminary Determination

Based on the analysis contained herein of 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 preliminarily finds that pile driving associated with the Antioch Bridge Seismic Retrofit Project would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking would have a negligible impact on the affected species or stocks. No subsistence hunting of marine mammals occurs in the region; therefore, no impact on the availability of a species or stock for subsistence use would occur.

### Endangered Species Act (ESA)

On January 26, 2009, NMFS received a request from Caltrans' to initiate consultation under section 7 of the ESA on its proposed Antioch Bridge Seismic Retrofit Project. NMFS concluded consultation on this action on July 13, 2009 and issued an incidental take statement authorizing the take of listed steelhead and green sturgeon. No ESA-listed marine mammal species occur within the action area; therefore, none would be affected.

### National Environmental Policy Act (NEPA)

NOAA Administrative Order Series 216–6, May 20, 1999 (NAO), identifies issuance of IHAs as a type of Federal action that may be categorically excluded from preparation of an environmental assessment or environmental impact statement. In determining whether a categorical exclusion (CE) is appropriate for a given IHA, NMFS must consider: (1) factors listed in Section 5.05b of the NAO regarding prior analysis for the "same" action; (2) context and intensity of impacts, as defined in 40 CFR 1508.27; and (3) factors listed in Section 5.05c of the NAO regarding exceptions to CEs. NMFS has prepared, supplemented, or adopted numerous EAs leading to Findings of No Significant Impact (FONISIs) for pile driving activities similar to the proposed activity, including ones for Caltrans' projects which involved driving large piles in

the northern section of the Bay where pinniped and cetacean species are more abundant. Based on these previous NEPA analyses and the analysis contained within this notice, NMFS has determined that issuance of a one-year IHA to Caltrans for the taking, by Level B harassment only, incidental to the Antioch Bridge Seismic Retrofit project does not have the potential to result in any significant changes to the human environment. Therefore, the issuance of an IHA to Caltrans for the specified activity falls under the category of those actions which can be categorically excluded from the need to prepare an Environmental Assessment or Environmental Impact Statement.

Dated: December 14, 2009.

**Helen M. Golde,**

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

### Department of the Navy

#### Notice of Public Hearings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for the Gulf of Alaska Navy Training Activities; Correction

**AGENCY:** Department of Navy, DoD.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of the Navy published a document in the **Federal Register** (74 FR 65761) of December 11, 2009, concerning public hearings on a Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for the Gulf of Alaska Navy Training Activities. The document contained an incorrect date.

**FOR FURTHER INFORMATION CONTACT:**

Naval Facilities Engineering Command Northwest, Attention: Mrs. Amy Burt, Gulf of Alaska Navy Training Activities EIS/OEIS Project Manager, 1101 Tautog Circle, Suite 203, Silverdale, WA 98315-1101; or <http://www.GulfofAlaskaNavyEIS.com>.

**Correction**

In the **Federal Register** (74 FR 65761) of December 11, 2009, on page 65762, in the first column, correct the fifth paragraph to read:

5. Tuesday, January 12, 2010, at Orca Adventure Lodge Meeting Room & Café, 2500 Orca Road, Cordova, Alaska.

Dated: December 15, 2009.

**T. M. Cruz,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. E9-30318 Filed 12-18-09; 8:45 am]

**BILLING CODE 3810-FF-P**

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## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 19, 2010.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the

Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 15, 2009.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Postsecondary Education

*Type of Review:* New.

*Title:* IEPS Fulbright-Hays Group Projects Abroad Customer Surveys.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 1,829.

*Burden Hours:* 809.

*Abstract:* The purpose of this evaluation is to assess the impact of the Group Projects Abroad (GPA) program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: a survey of GPA Project Directors; a survey of 2002-2008 GPA alumni; and a survey of 2009 alumni. Results from the three surveys will inform the writing of a final report determining the impact of the GPA program.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4182. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) 202-401-0526. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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