

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Notice Requesting Nominations for the Marine Protected Areas Federal Advisory Committee**

AGENCY: National Marine Protected Areas Center, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice requesting nominations for the Marine Protected Areas Federal Advisory Committee.

SUMMARY: The Department of Commerce is seeking nominations for membership on the Marine Protected Areas Federal Advisory Committee (Advisory Committee). The Advisory Committee was established to advise the Secretary of Commerce and the Secretary of the Interior in implementing Section 4 of Executive Order 13158, specifically on strategies and priorities for developing the national system of marine protected areas (MPAs) and on practical approaches to further enhance and expand protection of new and existing MPAs.

Nominations are sought for highly qualified non-Federal scientists, resource managers, and people representing other interests or organizations involved with or affected by marine conservation including in the Great Lakes. Six members of the Committee have terms that expire October 31, 2011, and nominations are sought to fill these vacancies.

Individuals seeking membership on the Advisory Committee should possess demonstrable expertise in a related field or represent a stakeholder interest affected by MPAs. Nominees also will be evaluated based on the following factors: marine policy experience, leadership and organization skills, region of country represented, and diversity characteristics. The membership reflects the Department's commitment to attaining balance and diversity. The full text of the Advisory Committee Charter and its current membership can be viewed at the Agency's Web page at <http://mpa.gov>.

DATES: Nominations must be postmarked on or before February 15, 2011.

ADDRESSES: Nominations should be sent to: Kara Yeager, National Marine Protected Areas Center, NOAA, 1305 East West Highway, Rm 9136, Silver Spring, MD 20910. E-mail:

Kara.Yeager@noaa.gov. E-mail nominations are acceptable.

FOR FURTHER INFORMATION CONTACT: Kara Yeager, National Marine Protected Areas Center, 1305 East-West Highway, Building 4, Station 9136, 301-713 3100 ext. 162. Kara.Yeager@noaa.gov.

SUPPLEMENTARY INFORMATION: In Executive Order 13158, the Department of Commerce and the Department of the Interior were directed to seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested people and organizations through a Marine Protected Areas Federal Advisory Committee. The Advisory Committee was established in June 2003 and currently includes 30 members. Effective October 31, 2011, the Committee size will be decreased to 20 members.

The Committee meets at least once annually. Committee members serve for one, four-year nonrenewable term. Members of the Committee will not be compensated, but may, upon request, be allowed travel and per diem expenses.

Each nomination submission should include the proposed member's name and organizational affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Advisory Committee, a curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: the nominee's name, address, phone number, fax number, and e-mail address if available.

Dated: December 3, 2010.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management.

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BILLING CODE P

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

RIN 0648-XZ83

Taking of Marine Mammals Incidental to Specified Activities; Construction of the East Span of the San Francisco-Oakland Bay Bridge

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 a request from the California Department of Transportation (CALTRANS) for renewal of an Incidental Harassment Authorization (IHA) to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OBB) in California. 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, four species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than January 12, 2011.

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 e-mail comments is PR1.0648-XZ803@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 renewal request may be obtained by writing to the address specified above, telephoning the contact listed below (*see FOR FURTHER INFORMATION CONTACT*), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

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

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission shall 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 certain subsistence uses and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking 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. 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].

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 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 July 8, 2010, CALTRANS submitted a request to NOAA requesting renewal of an IHA for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OBB, in San Francisco Bay (SFB), California. An IHA was previously issued to CALTRANS for this activity on August 14, 2009 and it expired on August 13, 2010 (74 FR 41684, August 18, 2009). In its renewal request, CALTRANS states that it has not scheduled any in-water pile driving for the 2010–2011 construction year. However, CALTRANS states that due to the possibility of unforeseen construction changes, it is important for CALTRANS to maintain a current IHA during SF-OBB Project construction operations. In addition, CALTRANS stated that should construction schedule changes necessitate the installation of in-water piles, these would be small diameter temporary piles like the ones they conducted in the 2009–2010 season, ranging from 0.3 m (18 in) to 1.2 m (48 in). A detailed description of the SF-OBB 2009–2010 construction work was provided in the August 18, 2009 (74 FR 41684) **Federal Register** notice of

issuance of the IHA and is not repeated here. The following is a brief summary of CALTRANS 2009–2010 activities.

CALTRANS 2009–2010 pile driving activities for 2009–2010 construction included driving the 42–48 in (1.1–1.2 m) diameter temporary piles, as opposed to the much larger 5.9–8.2 ft (1.8–2.5 m) diameter permanent piles they used to conduct in the past. Therefore, the noises from pile driving of these temporary piles are far less than from previous pile driving activities. However, CALTRANS indicates that deployment of an air bubble curtain would not be feasible for the driving of these smaller temporary piles due to the complexity of the driving frames. In addition, in the 2009–2010 construction season, certain piles were installed by using both vibratory and impact hammers, instead of only impact hammers as in the past.

Empirical hydroacoustic measurements of impact and vibratory hammers during CALTRANS testing pile driving in San Francisco Bay on October 23, December 9, and December 11, 2008, are shown in Table 1. Hydroacoustic monitors used data collected on December 9 and December 11, 2008, determine the distance of the 120 dB isopleths. At 1,900 m from the vibratory pile driving, sound levels are in the low 120 dB root-mean-squared (rms) range. At this distance pile driving was audible but not measurable due to ambient noise (CALTRANS, 2009).

If in-water pile driving is to be conducted, prior collected hydroacoustic data showed that the vibration of the bottom segment of each pile took approximately 3 minutes; the vibration of the top segment of each pile took approximately 8 minutes; and the impact driving of the top segment of each pile lasted an average of 15 minutes. On average, it took about 25 minutes of driving time to install each temporary pile (CALTRANS, 2009).

TABLE 1—ROOT-MEAN-SQUARE ISOPLETHS BASED ON HYDROACOUSTIC MONITORING IN SAN FRANCISCO BAY BY ILLINGWORTH & RODKIN, INC. (CALTRANS, 2009)

Sound level (dB-rms re 1 µPa)	120 *	160 **	180 **	190 **
Radius for Vibratory Pile Driving	1,900 m	250 m	15 m	does not exist.
Radius for Impact Pile Driving	NA	1,000 m	235 m	95 m.

* Hydroacoustic measurements for received level at 120 dB (rms) re 1 µPa from vibratory pile driving were collected on December 9 and 11, 2008.

** Hydroacoustic measurements for received levels at 160, 180, and 190 dB (rms) re 1 µPa from vibratory pile driving were collected on October 23, 2008.

Since the proposed SF-OBB construction project would be installing smaller temporary piles with no air bubble curtain, and since the pile driving activities would be performed

by using both impact and vibratory hammers, NMFS conducted an comparison of isopleths from CALTRANS' large foundation pile driving activities using an air bubble

curtain system (Table 2) with the current testing pile driving without an air bubble curtain by both impact and vibratory pile driving (Table 1). The acoustic data used from the foundation

pile driving were provided by CALTRANS (CALTRANS 2005). The comparison shows that the radius for the zone of influence (ZOI) for Level B behavioral harassment, as defined by marine mammals exposed to received impulse sound pressure level (SPL) of 160 dB (rms) re 1 μPa, for the previous larger pile driving activities using air bubble curtain was about 2,000 m (see further discussion on potential impacts

to marine mammals below). This distance is approximately the same as the radius for the proposed vibratory pile driving for the smaller temporary piles at received SPL of 120 dB (rms) re 1 μPa, a level thought may cause Level B behavioral harassment to marine mammals by vibratory pile driving. Therefore, NMFS concludes that the potential impacts to marine mammals from the proposed SF-OBB construction

project involving installation of smaller temporary piles using both impact and vibratory hammers without deployment of an air bubble curtain system are the same as the previous construction activities of installation larger foundation piles using impact hammers and air bubble curtain system as a mitigation measure. Pile driving is expected to occur during daylight hours only, as in the previous IHAs.

TABLE 2—SUMMARY OF HYDROACOUSTIC MEASUREMENTS REPORTED AS DB RE 1 μPa—PIER E3W MARINE MAMMAL HYDROACOUSTIC CHARACTERIZATION, 10/13/2004 (ADOPTED FROM CALTRANS, 2005)

Position	Water Depth	South Pile Hammer: Menck 1,700		North Pile Hammer: Menck 1,700	
		RMS impulse	Peak	RMS impulse	Peak
50m West (made by Caltrans)*	—	177	186		
100m West*	~12–14m	175	185	173	182
100m North	~12m	174	183		
100m South**	~12m			174	182
500m West	~8m	174	182		
500m South	~10m	167	177	177	188
1000m North	14m			169	178
1000m South	~10m	169	176		
2000m North	11m			162	169
2000m South	~10m	<140	<150		
4400m North	>12m			<130	<150
4400m South	>12m	<130	<150		

* Continuous measurement. All others are spot measurements of at least 5 minutes in duration.
 ** Many obstructions including Pier E3E.

Description of Marine Mammals in the Area of the Specified Activity

General information on the marine mammal species found in California waters can be found in Caretta *et al.* (2010), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2009.pdf>. Refer to that document for information on these species.

The marine mammals most likely to be found in the SF-OBB area are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May gray whales may also be present in the SF-OBB area. Information on California sea lion, harbor seal, and gray whale was provided in the November 14, 2003 (68 FR 64595), **Federal Register** notice; information on harbor porpoise was provided in the January 26, 2006 (71 FR 4352), **Federal Register** notice.

Potential Effects on Marine Mammals and Their Habitat

CALTRANS and NMFS have determined that open-water pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the

project vicinity while pile driving is being conducted. Pile driving could potentially harass those few pinnipeds that are in the water close to the project site, whether their heads are above or below the surface.

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS.

Measured source levels from impact pile driving can be as high as 214 dB re 1 μPa @ 1 m. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities,

experiments on a bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*) showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB (p-p) re 1 μPa, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa²-s) in the aforementioned experiment (Finneran *et al.* 2002).

However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity noise levels for prolonged period of time. Based on the best scientific information available, these sound levels are far below the threshold that could cause TTS or the onset of PTS.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band which the animals utilize. Therefore, since noise generated from in-water pile driving during the SF-OBB construction activities is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by harbor porpoises. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009).

Unlike TS, masking can potentially impact the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). All anthropogenic noise sources, such as those from vessels traffic, pile driving, and dredging activities, contribute to the elevated ambient noise levels, thus intensify masking.

Nevertheless, the sum of noise from the proposed SF-OBB construction activities is confined in an area of inland waters (San Francisco Bay) that is bounded by landmass, therefore, the noise generated is not expected to contribute to increased ocean ambient noise.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.* 1995), such as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/

or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

For example, at the Guerrero Negro Lagoon in Baja California, Mexico, which is one of the important breeding grounds for Pacific gray whales, shipping and dredging associated with a salt works may have induced gray whales to abandon the area through most of the 1960s (Bryant *et al.* 1984). After these activities stopped, the lagoon was reoccupied, first by single whales and later by cow-calf pairs.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

The proposed project area is not believed to be a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with SF-OBB construction activities are expected to affect only a small number of marine mammals on an infrequent basis.

Currently NMFS uses 160 dB re 1 μ Pa at received level for impulse noises (such as impact pile driving) as the onset of marine mammal behavioral harassment, and 120 dB re 1 μ Pa for continued noises (vibratory pile driving and dredging).

As far as airborne noise is concerned, based on airborne noise levels measured and on-site monitoring conducted during 2004 under a previous IHA, noise levels from the East Span project did not result in the harassment of

harbor seals hauled out on Yerba Buena Island (YBI). Also, noise levels from the East Span project are not expected to result in harassment of the sea lions hauled out at Pier 39 as airborne and waterborne sound pressure levels (SPLs) would attenuate to levels below where harassment would be expected by the time they reach that haul-out site, 5.7 km (3.5 miles) from the project site. Therefore, no pinniped hauled out would be affected as a result of the proposed pile-driving. A detailed description of the acoustic measurements is provided in the 2004 CALTRANS marine mammal and acoustic monitoring report for the same activity (CALTRANS 2005).

Short-term impacts to habitat may include minimal disturbance of the sediment where individual bridge piers are constructed. Long-term impacts to marine mammal habitat will be limited to the footprint of the piles and the obstruction they will create following installation. However, this impact is not considered significant as the marine mammals can easily swim around the piles of the new bridge, as they currently swim around the existing bridge piers.

Estimated Take by Incidental Harassment

For reasons provided in greater detail in NMFS' November 14, 2003 (68 FR 64595) Federal Register notice and in CALTRANS' annual monitoring reports (CALTRANS 2007; 2010) and marine mammal observation memoranda under the previous IHAs, the proposed construction would result in harassment of only small numbers of marine mammals and would not result in more than a negligible impact on marine mammal stocks and their habitat. This was achieved by implementing a variety of monitoring and mitigation measures including marine mammal monitoring before and during pile driving, establishing safety zones, and ramping up pile driving.

Marine mammal take estimates are based on marine mammal monitoring reports and marine mammal observations made during pile driving activities associated with the SF-OBB construction work authorized under prior IHAs. For pile driving activities conducted in 2006, 5 harbor seals and no other marine mammals were detected within the isopleths of 160 dB (rms) re 1 microPa during impact pile driving where air bubble curtains were deployed for mitigation measures (radius of ZOI at 500 m) (CALTRANS 2007). For pile driving activities conducted in the 2008 and 2009 seasons, CALTRANS monitored a much

larger ZOI of 120 dB (rms) re 1 microPa as a result of vibratory pile driving. A total of 11 harbor seals and 1 California sea lion were observed entering the 120 dB (rms) re 1 microPa ZOI (CALTRANS). However, despite the ZOI being monitored extended to 1,900 m for the 120 dB isopleths, CALTRANS did not specify which pile driving activities conducted in 2008 and 2009 used impact hammer and which ones used vibratory hammer. Therefore, at least some of these animals were not exposed to received level above 160 dB (rms) re 1 microPa, thus should not be considered as "taken" under the MMPA. No harbor porpoise or gray whale were observed during CALTRANS' pile driving activities since 2006 (CALTRANS 2007; 2010).

Based on these results, in addition to CALTRANS' expectation that very limited pile driving activities would be conducted in the next season, NMFS proposes that at maximum 10 harbor seals, 2 California sea lions, 5 harbor porpoises, and 1 gray whale could be exposed to noise levels above 120 dB by vibratory pile driving.

Marine Mammal Monitoring Report From Previous IHA

As mentioned above, marine mammal monitoring during CALTRANS' pile driving activities and weekly marine mammal observation memorandums (CALTRANS 2007; 2010) indicate that only a small number of harbor seals (a total of 16 individuals since 2006) and 1 California sea lion (a total of 1 individual in 2009) were observed within ZOIs that could result in behavioral harassment. However, the reports state that none of the animals were observed to be startled by the exposure, which could be an indication that these animals were habituated to human activities in San Francisco Bay. In addition, no harbor porpoise or gray whales were observed during pile driving activities associated to CALTRANS' SF-OBB construction work.

Proposed Mitigation Measures

NMFS proposes the following mitigation measures for CALTRANS' SF-OBB construction activities to reduce adverse impacts to marine mammals to the lowest extent practicable if in-water pile driving would be conducted.

Establishment of Safety/Buffer Zones

CALTRANS conducted underwater acoustic measures during temporary pile driving using impact hammers conducted under the previous IHA (CALTRANS 2010). The measurements

showed that the distance to the 190 dB (rms) re 1 μ Pa isopleths ranged from 50 m (164 ft) to 150 m (492 ft), and the distance to the 180 dB (rms) re 1 μ Pa isopleths ranged from 375 m (1,230 ft) to 500 m (1,640 ft) at different locations. NMFS proposes to use the most conservative measurements for the establishment of safety zones at 500 m (1,640 ft) for pinnipeds and at 150 m (492 ft) for cetaceans. These safety zones shall be monitored at all times when impact pile driving is underway.

No safety zone would be established for vibratory pile driving since the measured source levels will not exceed the 180 and 190 dB re 1 μ Pa.

Observers on boats would survey the safety zone to ensure that no marine mammals are seen within the zones before impact pile driving of a pile segment begins. If marine mammals are found within the safety zone, impact pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes and if no marine mammals are seen by the observer in that time it would be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), and the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995).

Once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay. If pile driving stops and then resumes, it would potentially have to occur for a longer time and at increased energy levels. In sum, this would simply amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment lengths and wall thickness have been specially designed so that when work is stopped between segments (but not during a single segment), the pile tip is never resting in highly resistant sediment layers. Therefore, because of this operational situation, if seals, sea lions, or harbor porpoises enter the safety zone after pile driving of a segment has begun, pile driving will continue and marine mammal observers will monitor and record marine mammal numbers and behavior. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident

Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously in this document.

Soft Start

It should be recognized that although marine mammals will be protected from Level A harassment (*i.e.*, injury) through marine mammal observers monitoring a 190-dB safety zone for pinnipeds and 180-dB safety zone for cetaceans, mitigation may not be 100 percent effective at all times in locating marine mammals. Therefore, in order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, CALTRANS would also "soft start" the hammer prior to operating at full capacity. CALTRANS typically implements a "soft start" with several initial hammer strikes at less than full capacity (*i.e.*, approximately 40–60 percent energy levels) with no less than a 1 minute interval between each strike. Similar levels of noise reduction are expected underwater. Therefore, the contractor would initiate pile driving hammers with this procedure in order to allow pinnipeds or cetaceans in the area to voluntarily move from the area. This should expose fewer animals to loud sounds both underwater and above water noise. This would also ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

Compliance With Equipment Noise Standards

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, all construction equipment shall comply with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment shall have noise control devices no less effective than those provided on the original equipment.

Proposed Monitoring Measures

The following monitoring measures are proposed for CALTRANS' SF-OBB construction activities if in-water pile driving would be conducted.

Safety zone monitoring would be conducted during driving of all in-water piles. Monitoring of the pinniped and cetacean safety zones shall be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. One three-observer team would be required for the safety zones around each pile driving site, so

that multiple teams would be required if pile driving is occurring at multiple locations at the same time. The observers would begin monitoring at least 30 minutes prior to startup of the pile driving. Most likely observers would conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) are not practical. Pile driving should not begin until the safety zones are clear of marine mammals. However, as described in the Mitigation section, once pile driving of a segment begins, operations would continue uninterrupted until the segment has reached its predetermined depth. However, if pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated safety zone prior to commencement of pile driving, the observer(s) must notify the Resident Engineer (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (*see* Mitigation). Monitoring should continue through the pile driving period and would end approximately 30 minutes after pile driving has been completed. Biological observations would be made using binoculars during daylight hours.

In addition to monitoring from boats, during in-water pile driving, monitoring at one control site (*i.e.*, harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, *e.g.*, Mowry Slough) would be designated and monitored for comparison. Monitoring would be conducted twice a week at the control site whenever in-water pile driving is being conducted. Data on all observations would be recorded and should include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather. The reactions of marine mammals would be recorded based on the following classifications that are consistent with the Richmond Bridge Harbor Seal survey methodology (for information on the Richmond Bridge authorization, *see* 68 FR 66076, November 25, 2003): (1) No response, (2) head alert (looks toward the source of disturbance), (3) approach water (but not leave), and (4) flush (leaves haul-out site). The number of marine mammals under each disturbance reaction should be recorded, as well as the time when seals re-haul after a flush.

Proposed Reporting Measures

Under previous IHAs, CALTRANS submitted weekly marine mammal

monitoring reports for the time when in-water pile driving was commenced. In June 2010, CALTRANS submitted the Marine Mammal Monitoring for the Self-anchored Suspension Span Temporary Tower, which also includes hydroacoustic measurements during both impact and vibratory pile driving. The report is available by contacting NMFS (*see* ADDRESSES).

Under the proposed IHA, coordination with NMFS would occur on a weekly basis. During periods with in-water pile driving activity, weekly monitoring reports will be made available to NMFS and the public at <http://biomitigation.org>. These weekly reports would include a summary of the previous week's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

In addition, CALTRANS would provide NMFS with a draft final report within 90 days after completion of the westbound Skyway contract and 90 days after completion of the Suspension Span foundations contract. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If no comments are received from NMFS within 30 days, the draft final report would be considered the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The CALTRANS' specified activities have been described based on best estimates of the planned SF-OBB construction project within the proposed project area. Some of the noises that would be generated as a result of the proposed bridge construction project, such as impact pile driving, are high intensity. However, the in-water pile driving for the test piles, if conducted, would use small hammers and/or vibratory pile driving methods, therefore the resulting safety zones for potential TS are expected to be small and can be easily monitored to ensure no marine mammals are within the zones when pile driving starts. In addition, the source levels from vibratory pile driving are expected to be below the TS onset threshold. Therefore, NMFS does not expect that any animals would receive Level A (including injury) harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving associated with SF-OBB construction project.

Based on marine mammal monitoring reports under previous IHAs, only 16 harbor seals and 1 California sea lion were observed within the 120 dB (in 2008 and 2009) or 160 dB (in 2006) ZOIs during in-water pile driving since 2006. NMFS proposes that up to 10 harbor seals, 2 California sea lions, 5 harbor porpoises, and 1 gray whale could be exposed to received levels above 120 dB (rms) during vibratory pile driving or 160 dB (rms) during impact pile driving for the next season of construction activities if pile driving frequency would be kept at 2008–2009 level. These are small numbers, representing 0.03% of the California stock of harbor seal population (estimated at 34,233; Carretta *et al.* 2010), 0.00% of the U.S. stock of California sea lion population (estimated at 238,000; Carretta *et al.* 2010), 0.05% of the San Francisco-Russian River stock of harbor porpoise population (estimated at 9,181; Carretta *et al.* 2010), and 0.01% of the Eastern North Pacific stock of gray whale population; Allen and Angliss 2010).

Animals exposed to construction noise associated with the SF-OBB construction work would be limited to

Level B behavioral harassment only, *i.e.*, the exposure of received levels for impulse noise between 160 and 180 dB (rms) re 1 μ Pa (from impact pile driving) and for non-impulse noise between 120 and 180 dB (rms) re 1 μ Pa (from vibratory pile driving). In addition, the potential behavioral responses from exposed animals are expected to be localized and short in duration.

These low intensity, localized, and short-term noise exposures (*i.e.*, 160 dB re 1 μ Pa (rms) from impulse sources and 120 dB re 1 μ Pa (rms) from non-impulse sources), are expected to cause brief startle reactions or short-term behavioral modification by the animals. These brief reactions and behavioral changes are expected to disappear when the exposures cease. Therefore, these levels of received underwater construction noise from the proposed SF-OBB construction project are not expected to affect marine mammal annual rates of recruitment or survival. The average measured 160 dB isopleths from impact pile driving is 1,000 m from the pile, and the estimated 120 dB isopleths from vibratory pile driving is approximately 1,900 m from the pile.

For the reasons discussed in this document, NMFS has preliminarily determined that the impact of in-water pile driving associated with construction of the SF-OBB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit SFB in general and the vicinity of the SF-OBB in particular. While behavioral modifications, including temporarily vacating the area around the construction site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lion, Pacific harbor seal, harbor porpoise, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. The activity will not have an unmitigable adverse impact on subsistence uses of marine mammals described in MMPA section 101(a)(5)(D)(i)(II).

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

National Environmental Policy Act (NEPA)

NMFS' prepared an Environmental Assessment (EA) for the take of marine mammals incidental to construction of the East Span of the SF-OBB and made a Finding of No Significant Impact (FONSI) on November 4, 2003. Due to the modification of part of the construction project and the mitigation measures, NMFS reviewed additional information from CALTRANS regarding empirical measurements of pile driving noises for the smaller temporary piles without an air bubble curtain system and the use of vibratory pile driving. NMFS prepared a Supplemental Environmental Assessment (SEA) and analyzed the potential impacts to marine mammals that would result from the modification of the action. A Finding of No Significant Impact (FONSI) was signed on August 5, 2009. A copy of the SEA and FONSI is available upon request (*see ADDRESSES*).

Endangered Species Act (ESA)

On October 30, 2001, NMFS completed consultation under section 7 of the ESA with the Federal Highway Administration (FHWA) on the CALTRANS' construction of a replacement bridge for the East Span of the SF-OBB in California. Anadromous salmonids are the only listed species which may be affected by the project. The finding contained in the Biological Opinion was that the proposed action at the East Span of the SF-OBB is not likely to jeopardize the continued existence of listed anadromous salmonids, or result in the destruction or adverse modification of designated critical habitat for these species. Listed marine mammals are not expected to be in the area of the action and thus would not be affected.

NMFS proposed issuance of an IHA to CALTRANS constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. There is no ESA-listed marine mammal species in the proposed action area, therefore, NMFS has determined that issuance of an IHA for this activity will have no effect on any listed marine mammal species.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor

seals, California sea lions, harbor porpoises, and gray whales incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge in California, 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, California sea lions, harbor porpoises, and possibly gray whales and will have no more than a negligible impact on these marine mammal stocks.

Dated: December 7, 2010.

James H. Lecky,

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

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, December 15, 2010, 10 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public

Matter To Be Considered

Decisional Matter: Full-Sized and Non-Full-Sized Cribs—Final Rules.

A live webcast of the Meeting can be viewed at <http://www.cpsc.gov/webcast>. For a recorded message containing the latest agenda information, call (301) 504-7948.

CONTACT PERSON FOR MORE INFORMATION:

Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: December 7, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010-31350 Filed 12-9-10; 4:15 pm]

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CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, December 15, 2010; 2 p.m.—3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.