number 5 will not be reused. The other existing sites will not be affected.

Under this revision, the site list for FTZ 2 will be as follows: *Site 1* (2 acres, expires 7/1/2011) -- 1015 Distributors Row, Harahan; *Site 2* (76 acres) -- Almonastar–Michoud Industrial District, Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet; *Site 3* (534 acres) -- Newport Industrial Park, Paris Road, New Orleans; *Site 4* (4 acres) -- 200 Crofton Road, Kenner (adjacent to the New Orleans International Airport); *Site 6* (136 acres) -- Arabi Terminal and Industrial Park located at Mile Point 90.5 on the Mississippi River, Arabi; *Site 7* (216 acres) -- Chalmette Terminal and Industrial Park, Old Kaiser Plant, St. Bernard Highway, New Orleans; *Site 8* (1.49 acres) -- 4501 North Galvez Street, New Orleans; *Site 9* (1.42 acres) -- 1560 Tchoupitoulas Avenue, New Orleans; *Site 10* (3.15 acres) -- 5301 Jefferson Highway, New Orleans; *Site 11* (4.59 acres) -- 700 Edwards Avenue, New Orleans; *Site 12* (6.65 acres, expires 8/31/2011) -- 333 Edwards Avenue, Jefferson Parish; *Site 13* (4.05 acres, expires 8/31/2011) -- 415 Edwards Avenue, Jefferson Parish; *Site 14* (2.29 acres, expires 8/31/2011) -- 5725 Powell Street, Jefferson Parish; *Site 15* (7.6 acres, expires 8/31/2011) -- 6040 Beven Street, Jefferson Parish; *Site 16* (5 acres, expires 8/31/2011) -- 325 Hord Street, Jefferson Parish; *Site 17* (19.12 acres, 4 parcels, expires 8/31/2011) -- Port of New Orleans Nashville Avenue Terminal Complex located at Nashville Avenue and Grain Elevator Road; *Site 18* (5.5 acres, expires 8/31/2011) -- 5050 Almonster Avenue, New Orleans; *Site 19* (4.89 acres, expires 8/31/2011) -- 5042 Bloomfield Street, Jefferson; *Site 20* (1.4 acres, expires 8/31/2011) -- Port of New Orleans Alabo Street Terminal; *Site 21* (17.23 acres, 6 parcels, expires 8/31/2011) -- Port of New Orleans Louisiana Avenue Marine Terminal Complex; *Site 22* (29.34 acres, expires 8/31/2011) -- 4300 Jourdan Road, New Orleans; *Site 23* (10.58 acres, expires 8/31/2011) -- 13601 Old Gentilly Road, New Orleans; *Site 24* (27.3 acres, expires 8/31/2011) -- 4010 France Road Parkway, New Orleans; *Site 25* (7 acres) -- 5200 Coffee Drive, New Orleans; *Site 26* (2 acres) -- 601 Market Street, New Orleans; *Site 27* (2 acres) -- 1601 Tchoupitoulas Street, New Orleans; *Site 28* (12 acres) -- 5630 Douglas Street, New Orleans; *Site 29* (9 acres) -- 6230 Bienvenue Street, New Orleans; *Site 30* (7 acres) -- 1400 Montegut Street, New Orleans; *Site 31* (1 acre) -- 1645 Tchoupitoulas Street, New Orleans; *Site 32* (1 acre) -- 1770 Tchoupitoulas Street, New Orleans; *Site 33* (9 acres) -- 1930 Japonica Street, New Orleans; *Site 34* (2 acres) -- 2941 Royal Street, New Orleans; *Site 35* (2.52 acres) -- 600 Market Street, New Orleans, 1662 St. Thomas Street, New Orleans and 619 St. James Street, New Orleans; *Site 36* (1 acre) -- 3101 Charters Street, New Orleans; *Site 37* (1 acre) -- 2601 Decatur Street, New Orleans; *Site 38* (1 acre) -- 2520 Decatur Street, New Orleans; *Site 39* (13 acres) -- 5300 Old Gentilly Boulevard, New Orleans; *Site 40* (8 acres) -- 4400 Florida Avenue, New Orleans; *Site 41* (2 acres) -- 410/420/440 Josephine Street, New Orleans and 427 Jackson Avenue, New Orleans; *Site 42* (7 acres) -- 500 Louisiana Avenue, New Orleans; *Site 43* (1 acre) -- 500 N. Cortez Street, New Orleans; *Site 44* (3 acres) -- 720 Richard Street, New Orleans; *Site 45* (12 acres) -- 701/801 Thayer Street, New Orleans and 700/800 Atlantic Street, New Orleans; *Site 46* (9 acres) -- 500 Edwards Avenue, New Orleans; *Site 47* (9 acres) -- 14100 Chef Menteur Highway, New Orleans; *Site 48* (1 acre) -- 2114–2120 Rousseau Street, New Orleans; *Site 49* (10 acres) -- 1000 Burmaster Street, New Orleans; *Site 50* (7 acres) -- 6025 River Road, New Orleans; *Site 51* (17 acres) -- 620/640 River Road, New Orleans; *Site 52* (1 acre) -- 1806 Religious Street, New Orleans; *Site 53* (3 acres) -- 1050 S. Jeff Davis Parkway, New Orleans; *Site 54* (2 acres) -- 1600 Annunciation Street, New Orleans; *Site 55* (5 acres) -- 402 Alabo Street, New Orleans; *Site 56* (4 acres) -- 4400 N. Galvez Street, New Orleans; *Site 57* (2 acres) -- 1883 Tchoupitoulas Street, New Orleans; *Site 58* (2 acres) -- 2311 Tchoupitoulas Street, New Orleans; *Site 59* (2 acres) -- 2940 Royal Street, New Orleans; *Site 60* (1.62 acres) -- 4403/4405 Roland Street, New Orleans; and, *Site 61* (3 acres) -- 6101 Terminal Drive, New Orleans.

For further information, contact Camille Evans at Camille.Evans@trade.gov or (202) 482–2350.

Dated: November 24, 2009.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–29002 Filed 12–03–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XS23**

### Small Takes of Marine Mammals Incidental to Specified Activities; Dumbarton 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:** SNMFS has received an application from the California Department of Transportation (Caltrans) for an Incidental Harassment Authorization (IHA) to take marine mammals, by Level B harassment, incidental to retrofitting the Dumbarton Bridge, located in southern San Francisco Bay (Bay), 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 harbor seals (Phoca vitulina richardii), California sea lions (*Zalophus californianus*), and gray whales (*Eschrichtius robustus*) during the specified activity.

**DATES:** Comments and information must be received no later than January 4, 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–XS23@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. NMFS is not responsible for comments sent to addresses other than the ones listed here.

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 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 April 17, 2009, NMFS received a request from Caltrans to harass marine mammals incidental to the Dumbarton Bridge Seismic Retrofit Project. The application was determined complete on August 29, 2009. The Dumbarton Bridge, located in southern San Francisco Bay (Bay), 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 Dumbarton Seismic Retrofit Project would provide a seismic upgrade of the Dumbarton Bridge to meet these current requirements.

To allow access to shallow water (<10 ft) piers which need to be retrofitted, a temporary trestle supported by 24–inch hollow steel piles must be installed; a barge will allow access to piers in deeper water. In addition, cofferdams will be created using sheet piles to pour concrete collars around pre-existing piles to strengthen the piers. Installation of the temporary steel and sheet piles necessitates use of mainly vibratory hammers, but an impact hammer may be used for proofing up to two piles each day. The entire retrofit project is expected to take three years to complete; however, installation of the temporary piles is expected to take approximately 4 months and installation of sheet piles could take one year. All other work would be on-land. Because pile driving has the potential to disturb marine mammals in the area, Caltrans is requesting a one-year authorization to harass marine mammals incidental to this specified activity.

**Construction Process**

The existing bridge span is approximately 8,600 ft (2,261 m) long and 85 ft (26 m) wide and provides access for approximately 80,000 trips across the Bay between Alameda and San Mateo counties each day. The bridge consists of three structural types in five sections. The five sections include a main channel crossing at the center of the bridge, two approach sections (one each on the eastern and western sides), and two trestle structures (one on each end) that anchor the bridge (see Figure 1–2 in the application). Seismic retrofit activities would take place on all five sections of the bridge; however, only a portion of the project contains the activity which could result in the take of marine mammals: pile driving.

Retrofitting itself involves strengthening connections between columns, pedestals, and pile caps which does not involve introducing intense sound production. Pile driving; however, does result in elevated in-air and in-water noise levels; therefore, this activity may impact marine mammals in the vicinity of the operating pile driver. It should be noted that some of the specifics of the project (e.g., percent of vibratory pile driving vs. impact pile driving) have been altered from description in the MMPA IHA application as a result of NMFS' recommendations. Therefore, the following description accurately describes the pile driving process Caltrans currently proposes.

*Approach Sections*

The approach sections adjacent to the main channel bridge crossing are supported by a series of piers. The western approach section is 2,580 ft (786 m) long and extends from Pier 1 to Pier 15. The eastern approach section is 2,600 ft (792 m) long, extending from Pier 32 to Pier 44. Seismic upgrades on these piers include retrofitting the existing piers through strengthening the connection between the columns, pedestals and pile caps with the installation of a reinforced concrete collar. In order to perform the concrete work, temporary work trestles and cofferdams will be installed for work access and to dewater the areas around the piers. In addition, trestles would facilitate removal of the adjacent Ravenswood Pier. Upon completion of the Dumbarton Bridge Seismic Retrofit Project, temporary trestles, cofferdams, barges and other falsework will be removed from the area.

Caltrans estimates approximately 1,000 temporary hollow steel pipe piles, with a maximum diameter of 24–inches, will be needed to construct the trestles. Piles associated with the temporary trestles would only be installed in water less than 10 ft in depth and would be driven out of water whenever possible (e.g., on the mudbanks at low tide). The piles will be inserted in rows of three, with approximately 25 ft (7.6 m) between each row. Temporary trestle superstructure (decking) will then be constructed atop the support piles. An additional 16 piles will extend from the temporary work trestle to surround each

existing support pier to allow construction around all sides of the pier. All temporary trestles will be less than 25 ft wide. Caltrans will install a maximum of 12 piles per day (six on each side of the Bay) using mainly a vibratory pile driving method. Vibration installation will start and continue for 5 minutes followed by an approximate 30–minute delay. The second pile will be vibrated into place for 5 minutes. Bent members and spans will then be erected, possibly taking 2 to 3 hours before the second set of piles is vibrated into place.

In total, vibratory pile driving would not occur for more than two hours per day. In order to verify load capacity of the temporary piles, approximately one in eight piles (12 percent) will be ''tapped'' with an impact hammer for proofing. Each pile to be tested would be tapped for a total of 10–1 5 seconds. No more than two piles per day would need testing. Vibratory pile driving may occur at any time during the year; however, when ESA-listed steelhead may be present (December 1st to June 14th), the re-tap or use of an impact hammer is restricted to low-tide periods only to minimize impact to salmonids.

Caltrans estimates construction of the temporary trestles will take approximately three weeks total. The temporary piles are expected to remain in the Bay for a period of three years and would be removed after retrofitting is complete. No trestle will be constructed in the main channel as all work in the channel will take place from a stationary barge.

In addition to the trestle, cofferdams will be created around piles facilitate installation on the concrete collars which will strengthen the bridge. Cofferdams will be created around 20 piers (piers 5–15 and 32–40) by vibrating steel sheet piles into place around each pier. Once the sheet piles are in place (2 ft from the edges of the existing piles caps and driven to approximately 15 ft) the space between the sheet piles and the piers would be dewatered. Once drained, a concrete collar providing seismic support will be poured in the cofferdam. Upon hardening, the sheet piles will be removed.

*Existing Trestle Structures*

Caltrans would also retrofit existing trestle structures on land at the east and west ends of the bridge to provide lateral strengthening. Each trestle is 600 ft long. To accomplish this, Caltrans would install of a total of 28 permanent 48–inch steel pipe piles close to the waters edge but not in the water; distance to the water is dependent upon the tidal stage. Fourteen of these piles would be placed on already paved road and fourteen would be placed into weedy ruderal vegetation enclosed by parking islands and the trestle itself. A maximum of four piles per day would be installed requiring 30–minutes driving time. These piles would be installed between October 1 and November 30 to avoid salmon migration periods. Although these piles would be driven on land, noise from impact hammering could propagate into the water from vibration and through the air-water interface (see Table 1 below). Therefore, NMFS considered impacts of land based pile driving when assessing impacts to marine mammals.

*Main Channel Crossing*

The main channel crossing is approximately 3,000 ft (914 m) long and spans the South Bay channel, which is about 2,500 ft (762 m) wide, extending from piers 16–31. No in-water construction will occur for retrofitting the main channel crossing. Barges and small marine vessels will be used to transport equipment to the main channel crossing. Structural improvements to the bridge hinges located within the superstructure (roadway bed), and on substructure (such as pedestals located above the pile caps, and on bent caps located immediately below the superstructure) will occur from the existing roadway or from atop barges. All tugs pushing or supporting barge placement are slow moving or, once in place, stationary. Caltrans would not actively approach any marine mammals, in accordance with NMFS viewing guidelines, in tugs or any other support vessels.

Some components of the project, as described in the application (e.g., creation of a construction of a barrier to keep high-tide water from encroaching onto the bridge, creation of a drainage system, and the removal of Ravenswood pier), would not involve introduction of noise into the environment or substantial marine mammal habitat related impacts and are not expected to harass marine mammals. Therefore, NMFS has preliminary determined that these specified activities do not warrant an authorization to incidentally harass marine mammals, and they will not be discussed further here. For more information on NMFS' determinations of these activities on ESA-listed salmonids, please refer to the August 10, 2009 Biological Opinion issued to Caltrans for this action.

**Action Area**

The Dumbarton Bridge Project site, including the area around the bridge piers and the area necessary to accommodate construction-related equipment such as work barges and cranes, is located in the south Bay, between Fremont and Menlo Park in East Palo Alto, California (see Figure 1–1 in application). The bridge is a major east/west connector between Interstate 880 in Alameda County and U.S. Highway 101 in San Mateo County. It is surrounded by open bay, salt ponds, salt marshes, mudflats, vernal pools and, on the eastern end, the Don Edwards San Francisco Bay National Wildlife Refuge. These habitats are home to a variety of important species, including protected birds, fish, and marine mammals, that are protected by a variety of environmental regulations. At high tide, water depth on the surrounding flats ranges from 1–10 ft (0.3–3 m), depending on local conditions. At low tide, the flats are exposed, hence pile driving may not always be occurring in-water.

**Affected Environment**

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 southern portion of the Bay regularly. Gray whales are sighted in the Bay during their yearly migration, though most sightings tend to occur in the central Bay. Humpback whales (*Megaptera noveangliae*), while sometimes present in the central Bay, are rare in the south and are not expected to be present within the action area. Therefore, humpback whales will not be considered further in this analysis and no take authorization is requested or proposed for this action.

**Harbor Seals**

The Pacific harbor seal impacted by this project belong to the California stock which is not listed as depleted under the MMPA or endangered or threatened under the Endangered Species Act (ESA). The most current stock assessment report estimates a population of 34,233 (NMFS 2005). More site specific, a recent marine mammal study conducted before and during seismic retrofit work on the Richmond San Rafael Bridge (RSRB) in the northern Bay included extensive monitoring of marine mammals at points throughout the Bay, including the Central and South Bay areas. This study concluded that at least 500 seals populate the Bay, an estimate which closely agrees with previous seal counts, which ranged from 524 to 641 seals from 1987 to 1999 (Goals Project 2000).

Harbor seals generally do not migrate and display year-round site fidelity,

though they have been known to swim several hundred miles to find food or suitable habitat. Seals within the Bay engage in limited seasonal movements associated with foraging and breeding activities (Kopec and Harvey 1995), and seals in the South Bay may make daily northward foraging excursions.

Although generally solitary in the water, harbor seals come ashore at communal sites known as ''haul-outs,'' which are used for resting, thermoregulation, birthing, and nursing pups (see figure 4–1. in the application for haul-out sites in the Bay). Haul-out locations are relatively consistent from year to year (Kopec and Harvey, 1995), and females have been recorded returning to their own natal haul-out when breeding (Green *et al.*, 2006). Bay harbor seals haul out in groups ranging in size from a few individuals to several hundred seals. Bay haul-out sites that support some of the largest concentrations of seals include Mowry Slough (located approximately 4 miles south of the project site), Corte Madera Marsh, Castro Rocks, and Yerba Buena Island in the Central Bay (all approximately 25 to 35 miles north of the project site). The haul-out site closest to the bridge is at Newark Slough, approximately 2.7 miles south of the project site, near the junction of Newark Slough and Plummer Creek. Although the Newark Slough haul-out is a known pupping site, relatively few harbor seals use the site. Both Newark and Mowry sloughs are used by seals continuously year-round but have higher numbers of seals during pupping and molting seasons (spring and summer). Because of the location of these two sites are on the southern side of a spit of land, the bridge is not visible from these locations. Hence, construction activities would not be visible to seals at the haul-outs. Other South Bay haul-outs include Coyote Point, Seal Slough, Belmont Slough, Bair Island, Corkscrew Slough, Greco Island, Ravenswood Point, Hayward Slough, Dumbarton Point, Calaveras Point, Drawbridge, and Guadalupe Slough (Goals Project, 2000). Caltrans' IHA application contains a map with locations of these haul-outs relative to the Dumbarton Bridge.

In addition to Newark and Mowry haul-outs, there is one foraging area identified close to the bridge. The most numerous prey items identified in harbor seal fecal samples from haul-out sites in the Bay include yellowfin goby (*Acanthogobius flavimanus*), northern anchovy (*Engraulis mordax*), Pacific herring (*Clupea harengus pallasi*), staghorn sculpin (Leptocottus armatus), plainfin midshipman (Porichthys notatus), and white croaker (Genyonemus lineatas) (Harvey and Torok, 1994).

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 75 kHz. In-air, the lower limit remains at 75 Hz but the highest audible frequencies are only around 30 kHz (Southall, *et al.*, 2007).

**California Sea Lions**

California sea lions are endemic to the Northern Pacific Ocean, breeding in southern California and along the Channel Islands during the spring. They are not listed as depleted under the MMPA or as endangered or threatened under the ESA. The most current stock assessment report estimates there are approximately 238,000 sea lions in the U.S (NMFS, 2007). In the Bay, sea lions haul out primarily on floating docks at Pier 39 in the Fisherman's Wharf area of the San Francisco Marina and on buoys and similar structures throughout the Bay. They are seen swimming mainly off the San Francisco and Marin shorelines within the Bay but may occasionally enter the South Bay area to forage. Although not a frequent visitor to the southern portion of the Bay, sea lions have been sighted traveling through the area, most likely for foraging opportunities. Their diet consists primarily of pacific herring, northern anchovy, and sardines. Sea lions rarely haul-out in the southern Bay.

**Gray Whales**

Gray whales, a large baleen whale, potentially affected by the proposed project belong to the Eastern North Pacific stock. This stock is not listed as depleted under the MMPA and was de-listed from the ESA in 1994 (59 FR 31094). Currently, this stock's population is estimated at approximately 18,813 individuals (NMFS, 2008). Eastern gray whales migrate each year along the west coast of North America, feeding in northern waters primarily off Alaska during the summer before heading to breeding and calving grounds off Mexico over the winter. Their migrations take them past the San Francisco coast from December through February, heading south, and again from mid-February through July, heading north. During the migration, gray whales will occasionally enter rivers and bays (such as the Bay) along the coast but not in high numbers. Individual whales may use the shallow Bay waters for foraging, or they may simply be off course. Gray whales are the only baleen whales known to feed on the sea floor, where they scoop up bottom sediments to filter out benthic crustaceans, mollusks, and worms.

No acoustical measurements of gray whale hearing have been published. However, gray whales likely hear sounds in the 50 to 500 Hz range, and baleen whale sounds, though mostly below 1 kHz, are common up to 8 kHz. However, the low and high end limits of hearing for gray whales are unknown (Richardson *et al.* 1995).

**Impacts to Marine Mammals**

As stated, noise from pile driving has the potential to harass marine mammals present in the action area. Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water. 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. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 microPa'' and ''re: 1 microPa'', respectively. All underwater noise levels presented here are quantified in decibels relative to 1 microPa (dB, re: 1 microPa) unless otherwise noted.

Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (e.g., snapping shrimp, whale songs) are ubiquitous throughout the world's oceans. 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 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).

**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 (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; 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 hearing threshold is reduced by ≥ 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; 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 as 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 and pulse noise (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).

There are limited data available on the effects of non-pulse noise (e.g., vibratory pile driving) 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; no data exist from exposures at higher levels. Jacobs and Terhune (2002) observed wild harbor seal reactions to high frequency 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. In a captive study (Kastelein, 2006), a group of seals were collectively subjected to data collection and communication network (ACME) non-pulse sounds at 8–16 kHz. Exposures between 80–107 dB did not induce strong behavioral responses; however, a single observation at 100–110 dB indicated an avoidance response at this level. The group returned to baseline conditions shortly following exposure. 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. While most of the pile driving will be vibratory, a small portion of piles will be driven using an impact hammer (pulse noise). Southall *et al.* (2007) reviewed relevant data from studies involving pinnipeds exposed to pulse noise and concluded that exposures to 150 to 180 dB generally have limited potential to induce avoidance behavior.

Seals and sea lions exposed to threshold level sounds in water (160 dB for pulse sounds (e.g., impact pile driving) or 120 dB for non-pulse sounds (e.g., vibratory pile driving)) may elicit temporary avoidance behavior around the bridge which may affect the routes of seals under the bridge or temporarily inhibit them from foraging near the bridge. However, limiting pile driving to two hours per day would allow for minimal disruption of harbor seal foraging or dispersal habitat under or near the bridge. Even more limited impacts to foraging or haul-out for sea lions are anticipated because very few sea lions use the South Bay for foraging and no known sea lion haul-outs exist in the South Bay. The bridge area is not a regular or commonly used foraging or calving area for gray whales; therefore, project construction activities are not expected to affect whale foraging or reproductive success within the Bay.

The individual piers on the bridge which are to be retrofitted are spaced at approximately 100–350–ft (30–106 m) intervals. The rows of piles for the temporary construction trestles will be spaced at 25–ft (7.6 m) intervals. The temporary trestle will reach bayward to the 10–ft (3 m) depth contour with the top of the trestle approximately seven feet above sea level. The temporary trestle will not span the main channel, which remains open, allowing passage of marine mammals through the project area. Therefore, the construction work will not present any physical barrier to marine mammals that may move between the haul-out sites and foraging areas.

Hauled-out seals are vulnerable to stresses caused by human disturbance, especially during pupping and molting seasons. Studies have shown seals may react negatively to humans coming within 300 to 570 feet (Green *et al.*, 2006) and may temporarily abandon their haul-outs or experience reduced reproductive success (Calambokidis *et al.*, 1979). Construction-related impacts to seals in the form of alert and flush disturbances were recorded during the Richmond San Rafael Bridge (RSRB) monitoring (Green *et al.*, 2006). Seals hauled out at Castro Rocks, located 82 to 280 feet from the RSRB, were disturbed by various construction-related activities, including noise and boating activity. However, during the pile installation demonstration project (PIDP) for the seismic retrofit of the East Span of the Bay Bridge, seals at the Yerba Buena Island haul-out initially became alerted when at a distance of approximately 0.94 miles, but quickly became acclimatized (Parsons Brinckerhoff, 2001).

Hauled-out seals at Newark Slough (the closest haul-out located 2.7 miles south of the bridge) or other South Bay

haul-outs are not expected to be affected by project-related activities. Support vessel activities would be primarily north of or adjacent to the Dumbarton Bridge, and pile driving would only occur at the bridge. The in-air harassment threshold (90 dB re: 20 microPa) distance for harbor seals from pile driving is not expected to reach more than 800 ft (244 m). Given the distance to the closest haul-out (Newark Slough) is 2.7 miles away, NMFS does not anticipate seals on haul-outs would be affected as a result of the project.

**Proposed Mitigation**

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. 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 harassment levels to marine mammals.

*Limited use of Impact Hammer*

As a result of Section 7 consultation discussions with NMFS (to reduce impacts to ESA-listed fish species), Caltrans has agreed to drive all temporary piles with a vibratory hammer with the exception of one pile per day being ''proofed'' with an impact hammer which has a higher source level. Proofing requires approximately 20 blows per pile which equates to approximately 15–20 seconds of impact hammering per day. As a result of Section 7 consultation, Caltrans would limit proofing piles during low tide only, essentially out-of-water on the mudbanks, when ESA-listed steelhead salmon are present (December 1 to June 14).

*Establishment of safety and zones and shut down requirements*

Although the isopleths to the 190dB and 180dB harassment thresholds, are modeled to be within 220 ft (67 m) of the pile hammer (see Table 1), Caltrans would shut down or delay commencement of pile driving should a marine mammal come within or approach 250 ft (76m) of the pile being driven. The aforementioned threshold levels are based on an assumption that exposure to lower received levels will not injure these animals or impair their hearing abilities, but that higher received levels might have such effects. It should be understood that marine mammals inside these safety zones will not necessarily be injured or seriously injured or killed as these zones were established prior to the current understanding that significantly higher levels of impulse sounds would be required before injury or mortality could occur (see Southall *et al.*, 2007).

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 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 will be repeated two additional times. Due to the short duration of impact pile driving (20 seconds), general ramp-up requirement for impact pile driving do 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 250 ft (76 m). If any marine mammal is sighted within or approaching the safety 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.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

*Visual Monitoring*

At least one week prior to the start of construction, the protected species observers (PSOs), trained in detection and identification of marine mammals, will conduct a survey effort in order to establish baseline data of marine mammal use in the project area. This effort will consist of 12 hours of monitoring during the work window that will be used during construction (0700 to 1900 hrs).

Safety zone monitoring will be conducted during all active pile driving. Modeling suggests the 190dB and 180dB isopleths are located 60 ft (18 m) and 220 ft (67 m) from steel piles being driving with an impact hammer and even less so for vibratory pile driving. As a conservative measure, Caltrans is proposing a 250 ft (76 m) safety zone (i.e., mandatory shut down zone) until acoustic measurements can be made to confirm the distances identified in Table 1 above are accurate. Should acoustic studies deem these distances are not accurate, they will be adjusted accordingly. Pile driving will not begin until the safety zone is clear of marine mammals and will be stopped in the event that marine mammals enter the safety zone. SPOs will begin monitoring at least 30 minutes prior to the commencement of pile driving. Data collection will consist of a count of all pinnipeds and cetaceans by species, a description of behavior (based on the Richmond Bridge Harbor Seal Survey classification system), sex and age class, if possible, location, direction of movement, type of construction that is occurring, time that pile driving begins

and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as wind speed, wind direction, visibility, temperature, tide level, current, and sea state (described using the standard Beaufort sea scale) would also be recorded.

Monitoring of marine mammals will be conducted using high quality binoculars (e.g., Zeiss, 10 x 42 power). When possible, digital video or 35 mm still cameras will also be used to document the behavior and response of marine mammals to construction activities or other disturbances. Each monitor will have a radio for contact with other researchers or work crews if necessary, a GPS unit for determining observation location, and an electronic range finder to determine distance to marine mammals, boats, buoys and construction equipment. Most likely observers will conduct the monitoring from the Dumbarton Bridge surface or catwalks, providing a high vantage point for the observer; however, should a small vessel be used to monitor for marine mammals, 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.

*Acoustic Monitoring*

Hydroacoustic monitoring would be conducted by a qualified monitor during pile-driving activities when piles are being driven in water greater than 3 feet in depth. Details would be developed during work plan preparation, but might include monitoring one pile in every set of 3 piles during installation of the temporary trestles. A reference location would be established at the estimated 180 dB contour (distance of 230 feet from the pile driving). Sound measurements would be taken at the reference location and at locations every 20 feet until the 180 dB level is found. Measurements would be taken at two depths: one in mid water column and one near the bottom but at least 3 feet above the bottom, unless obstructions such as land force a variation in depth or number of measurements. Marine mammal safety zones would be adjusted to maintain a safety zone outside of 180 dB, according to the results of this monitoring.

*Reporting*

Data collection will consist of a count of all pinnipeds and cetaceans by species, a description of behavior (based on the Richmond Bridge Harbor Seal Survey classification system), sex and age class, if possible, location, direction of movement, type of construction that is occurring, time that pile driving begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as wind speed, wind direction, visibility, temperature, tide level, current, and sea state (described using the standard Beaufort sea scale) would also be recorded. Monitoring reports including the above listed information would be submitted to NMFS weekly. In addition, a final report summarizing all marine mammal monitoring and construction activities will be submitted to NMFS 90 days after the IHA expires.

**Estimated Take by Harassment**

NMFS typically proposes threshold sound levels to 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 160 dB 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 threshold sound levels from pile driving during the proposed action are outlined in Table 1 below (see Chapter 7 and Appendix A in the application for further detail how these distances were derived).

TABLE 1: MODELED UNDERWATER DISTANCES TO NMFS' MARINE MAMMAL HARASSMENT THRESHOLD LEVELS.

| Driving Location | Pile Type | Hammer Type | Calculated Distance to Criteria Thresholds[1] | | | |
|---|---|---|---|---|---|---|
| | | | 190 dB | 180 dB | 160 dB | 120 dB |
| Water | 24 " steel | Impact | 60 ft (18m) | 220 ft (67m) | 3,300 ft (1005m) | n/a |
| Water | 24 " steel | Vibratory | n/a | 10 ft (3m) | n/a | 3.2 miles (5.14 km) |
| Water | Sheet pile | Vibratory | n/a | 5 ft (1.5m) | n/a | 1.4 miles (2.25 kms) |
| Land | 48" steel | Impact | n/a | 100 ft (30.5 m) | 1,475 ft (500m) | n/a |
| Land | Steel piles | Vibratory | 0 | 0 | 0 | 150 ft (45.7 m) |

[1]dB referenced to 1 microPa in water and to 20 microPa on land.

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 and 100 dB re: 20 micoPa, respectively. In-air noise calculations from pile driving for this project predict that noise levels will be reduced to approximately 83 dB re: 20 microPa at 800 m. Harbor seals or California sea lions are not known to haul-out this close to the bridge (the closest haul-out is 2.7 miles away); therefore, pinnipeds at haulouts are not expected to be affected from in-air pile driving noise.

The population of harbor seals in the South Bay is estimated at approximately 300. Specific movements of the seals are not well understood; however, based on marine mammal surveys, approximately half the population passes through the action area each day some of which may be younger animals given the proximity to the haul-outs. Assuming equal distribution of seal movement throughout the day, approximately 4

seals could pass through the area at any given hour (between zero and four seals have been sighted per hour at the northern East Span Bay Bridge project location). Pile driving is expected to last a maximum of two hours per day; therefore eight seals per day could be exposed to harassment level noise for approximately 4 months. Therefore, Caltrans is requesting the take, by Level B harassment only, 1,120 harbor seals.

Because there are no California sea lion haul-out sites in the South Bay, sea lions are expected to be incidental visitors to the area. Given the limited sightings in the South Bay and the distance to the nearest haul-out, Caltrans is requesting the take of 10 adult sea lions. Similarly, gray whales are rare in the southern portion of the Bay however they may be present resulting in Caltrans requesting authorization to harass two gray whales per year incidental to the proposed action.

**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 Dumbarton 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 from will have a negligible impact on the affected species or stocks. No subsistence hunting of marine mammals occur 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 12, 2009, NMFS received a request from the Federal Highway Administration (FHWA) to initiate consultation under section 7 of the ESA on Caltrans' proposed Dumbarton Bridge Seismic Retrofit Project as ESA-listed fish are present within the action area. NMFS issued a Biological Opinion (BiOp) on Caltran's Dumbarton Bridge Seismic Retrofit Project on August, 10, 2009. The BiOp concluded that the proposed activities were not likely to jeopardize the continued existence of Central California Coast steelhead Distinct Population Segment (DPS) or North American green sturgeon DPS and are not likely to adversely modify or destroy critical habitat for CCC steelhead DPS.

NMFS has determined that no ESA listed marine mammal species are likely to be affected by the proposed action as none are present within the action area; therefore, ESA consultation on issuance of the proposed IHA is not warranted.

**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 (FONSIs) for pile driving activities similar to the proposed activity, including ones for Caltrans' projects which involved driving larger 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 Dumbarton 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: November 19, 2009.

**James H. Lecky,**

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

[FR Doc. E9–28991 Filed 12–3–09; 8:45 am]

**BILLING CODE 3510–22–S**

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

### Procurement List; Additions

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

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

**SUMMARY:** This action adds to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* January 4, 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:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

**Additions**

On 9/11/2009 (74 FR 46748–46749) and 10/9/2009 (74 FR 52186), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to furnish a product and a service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service 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 a product and a service to the Government.

2. The action will result in authorizing small entities to furnish a product and a service 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 a product and a service proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following product and service are added to the Procurement List:

**Product**

*NSN:* 3990–00–NSH–0076—Type E Pallet.