SUMMARY: On November 26, 2010, the binational panel issued its decision in the review of the United States International Trade Commission's (the Commission) final injury determination in Light-Walled Rectangular Pipe and Tube from China, Korea, and Mexico (NAFTA Secretariat File Number USA–MEX–2008–1904–04). The binational panel upheld in part and remanded in part the Commission's determination. The Commission is directed to issue its remand determination within sixty days from the date of this panel decision. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Dated: November 26, 2010.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. 2010–30231 Filed 11–30–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY30

Takes of Marine Mammals Incidental to Specified Activities; Construction of the Parsons Slough Sill Project

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the NOAA Restoration Center, Southwest Region, to take, by Level B Harassment only, small numbers of harbor seals (*Phoca vitulina richardsi*) incidental to pile driving associated with the Parsons Slough Sill Project.

DATES: Effective November 24, 2010, through February 28, 2011.

ADDRESSES: A copy of the IHA, the application, and the associated Environmental Assessment and Finding of No Significant Impact are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper or Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. 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 authorization published in the **Federal Register** for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on August 5, 2010, from the NOAA Restoration Center, Southwest Region, for the taking, by harassment, of marine mammals incidental to the construction of a partially submerged tidal barrier (sill) across the mouth of the Parsons Slough Channel. Parsons Slough is located on the southeast side of the Elkhorn Slough Estuary, which is situated 90 miles (145 km) south of San Francisco and 20 miles (32 km) north of Monterey in Monterey County, California. The application was determined to be complete on August 16, 2010. Pile driving during the project may result in harassment of Pacific

harbor seals (*Phoca vitulina richardsi*) located in the action area. In accordance with MMPA implementing regulations, NMFS issued a notice in the **Federal Register** on October 5, 2010 (75 FR 61432), requesting comments from the public on the proposed IHA.

The specified activities are also likely to result in the take by incidental harassment of southern sea otters (*Enhydra lutirs*). The US Fish and Wildlife Service (USFWS) has management jurisdiction over southern sea otters. NOAA received a separate MMPA Section 101(a)(5)(D) authorization for incidental take of sea otters from USFWS. The potential take of sea otters is not further addressed in this notice.

Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' proposed IHA notice in the **Federal Register** (75 FR 61432) and a summary is provided here.

In order to reduce tidal scour, the NOAA Restoration Center, Southwest Region, proposes to construct a partially submerged tidal barrier (sill), similar to an underwater wall, across the mouth of Parsons Slough. The sill structure would prevent head cutting (*i.e.,* erosion in a channel caused by an abrupt change in slope) in Elkhorn Slough from migrating upstream into Parsons Slough, would retain sediment that accretes within Parsons Slough, and would reduce the tidal prism of Parsons Slough. This reduction in tidal prism would reduce current velocities between Parsons Slough and the mouth of Elkhorn Slough, thereby reducing tidal scour. The proposed project, which is referred to as the Parsons Slough Project, would also include establishment of artificial reefs to support populations of Olympia oysters (*Ostrea lurida*) in the northeastern part of the Parsons Slough Complex.

The sill structure would be constructed of steel sheet piles that would extend 270 ft (82.3 m) across the mouth of the Parsons Slough Channel. A 100 ft (30 m) wide lower area, located in the center of the structure, would allow water to flow between Parsons Slough and Elkhorn Slough. This portion of the structure would be submerged more than 99 percent of the time. The center of the lower part of the structure would include a notch approximately 25 ft (7.6 m) wide, with the top elevation of the sheet pile in this notch at an elevation of −5 ft (−1.5 m). The notch would provide for the passage of water at all tide levels and would facilitate the movement of fish and wildlife into and out of Parsons Slough. The top elevation of the sheet pile in the remaining 75 ft (23 m) of the central section of the base structure would be −2 ft (−0.6 m). The remaining portions of the sheet piles to the left and right of the center portion of the structure would have a top elevation of 9.6 ft (3 m).

All in-channel construction activities would be constructed from barges, and no heavy equipment would enter the channels. Most of these construction activities are in-water (e.g., installation of end-bearing piles and sheet piles, placement of rockfill buttress).

Installation of the sheet pile wall would be supported by two rows of seven end-bearing piles, as well as a single row of sheet pile located between the piles. The end-bearing piles would be driven through the soft soils to penetrate 10 ft (3 m) below the top of the dense sandy deposits that underlie the soft soils at an elevation of approximately −80 ft (−24.4 m). Additionally, up to 45 temporary end-bearing piles may be installed in the main channel of Elkhorn Slough at the Kirby Park staging site (approximately 2 mi (3.2 km) from the project site) to facilitate barge docking and loading (if the temporary dock is constructed on pilings, rather than temporary rock-fill). These piles, if necessary, would be removed after construction when the floating dock is disassembled. Pile driving at the staging site is not expected to result in any harbor seal takes. Harbor seals usually occur just beyond the mouth of Elkhorn Slough in the Moss Landing harbor and in the Salinas River channel south of the Moss Landing Bridge, and the lower portion of Elkhorn Slough extending up to Parsons Slough and Rubis Creek. Harbor seals do not typically use the part of the estuary that leads up to Kirby Creek and the nearest occupied areas and haul-out locations (approximately 2 mi (3.2 km to the south) are beyond the estimated distances to NMFS' current threshold sound levels from pile driving proposed at the Kirby Park staging area (*see* Table 3 and Table 4).

A vibratory hammer would be used to start driving all sheet pile and end-bearing piles, but an impact hammer may be required to complete driving. If an impact hammer is required during construction, cushioning blocks would be used to attenuate the sound. Vibratory hammers clamp onto the sheet pile; therefore, no cushioning blocks would be used during vibratory pile driving.

TABLE 1—TYPICAL NEAR-SOURCE (10 M) Underwater Noise Levels

Type of pile	Driving technique	RMS level
H-Pile	Impact Hammer.	183 dB.
H-Pile	Vibratory Hammer.	155 dB.
Sheet Pile	Impact Hammer.	175 dB.
Sheet Pile	Vibratory Hammer.	160 dB.

TABLE 2—AIRBORNE NOISE LEVEL (15 M)

Type of pile	Driving technique	L_{max}/rms level
H-Pile	Impact Hammer.	109 dBA.
H-Pile	Vibratory Hammer.	95 dBA.
Sheet Pile	Impact Hammer.	106 dBA.
Sheet Pile	Vibratory Hammer.	97 dBA.

The applicant anticipates that construction would last 11 to 15 weeks beginning around November 2010 and ending in February 2011. In-water construction would primarily occur during slack tide. Actual pile driving time during this work window will depend on a number of factors, such as sediments, currents, presence of marine mammals, and equipment maintenance; however, the applicant anticipates that it will take approximately 20 days to install the end-bearing piles and sheet pile during the 11 to 15 weeks of construction. Construction activities at night are also anticipated during this 11 to 15 week period but would not last for more than 5 hrs at a time (duration of a slack tide at night).

Comments and Responses

A notice of receipt and request for public comments on the application and proposed authorization was published on October 5, 2010 (75 FR 61432). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) on the proposed IHA. No comments were received from any other members of the public.

Comment 1: The Commission recommended that NMFS require the applicant use location-specific environmental parameters to re-estimate safety zones and then use in-situ measurements to verify and, if need be, refine the safety zone prior to or at the beginning of sill construction.

Response: Because the estimated source levels of the vibratory pile drivers are 30–35 dB below 190 dB, NMFS is confident that the sound produced during vibratory pile driving will not approach the threshold for Level A harassment of pinnipeds (190 dB re: 1 microPa (rms)). Therefore, NMFS will not require a sound verification study during vibratory pile driving. However, with respect to impact pile driving, NMFS will require the applicant to conduct a sound verification study to ensure that the safety zone is adequate to prevent exposing pinnipeds to sound levels that may result in Level A harassment.

Comment 2: The Commission recommended that NMFS require that observations be made during all soft-starts to gather the data needed to analyze and report on its effectiveness as a mitigation measure.

Response: NMFS agrees that the NOAA Restoration Center, Southwest Region, needs to monitor for marine mammals during all soft-starts. PSOs will be on-site and monitoring for marine mammals at least 30 minutes prior to, during, and after all construction activities (including during soft-starts for pile driving). NMFS believes that these monitoring requirements will allow for adequate interpretation of how marine mammals behave in response to pile driving, including soft-starts.

Description of Marine Mammals in the Area of the Specified Activity

Marine mammals with confirmed occurrences in Parsons Slough are Pacific harbor seals and southern sea otters (*Enhydra lutirs*). However, southern sea otters are managed by the USFWS and will not be considered further in this IHA notice. Information on Pacific harbor seals was provided in the October 5, 2010 (75 FR 61432) **Federal Register** notice.

Potential Effects of the Specified Activity on Marine Mammals

Pile driving at the site of the proposed sill may temporarily impact marine mammal behavior within the action area due to elevated noise levels both in-air and in-water. A detailed description of potential impacts to marine mammals can be found in NMFS' October 5, 2010 **Federal Register** notice (75 FR 61432) and are summarized here.

Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels (RLs) will depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to noise are likely to be dependent on a variety of factors including, but not limited to, the behavioral state (*e.g.,* feeding, traveling, *etc.*) of the animal at the time it receives the stimulus, frequency of the sound, distance from the source, and the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

Hearing Impairment

Temporary or permanent hearing impairment is possible when marine mammals are exposed to very loud sounds. Temporary threshold shift (TTS) and permanent threshold shift (PTS). Relationships between TTS and PTS have not been studied in marine mammals, but are assumed to be similar to those in humans and terrestrial mammals. There is 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 those eliciting TTS-onset. NMFS presumes PTS to be likely if the threshold is reduced by ≥ 40 dB (i.e., 40 dB of TTS). Due to required mitigation measures and the fact that source levels of the impact and vibratory hammers are below the 190 dB injury threshold used by NMFS for pinniped species, NMFS does not expect that harbor seals will be exposed to levels that could elicit PTS or even mild TTS.

Behavioral Impacts

The source of underwater noise during construction would be pile driving to install the end-bearing piles and sheet pile tidal barrier. There are limited data available on the effects of non-pulse noise on pinnipeds in-water; however, field and captive studies to date collectively suggest that pinnipeds do not strongly react to exposure between 90–140 dB re 1 microPa.

Seals exposed to sound levels that exceed the Level B harassment threshold (120 dB for non-pulse; 160 dB for pulse) may exhibit temporary avoid behavior around the Union Pacific Railroad bridge, which may affect movement of seals under the bridge or inhibit them from resting at haul-out sites near the bridge. The estimated 11–15 weeks required for construction may result in the temporary abandonment of haul-out sites near the bridge and within Parsons Slough. Although harbor seals may temporarily abandon haul out sites, there are an abundance of other haul-out sites in the area. Additionally, the required mitigation measures restrict construction to the non-breeding season to avoid impacts to potentially sensitive mother-pup pairs. In general, ambient noise levels in the area are low; however, animals in the vicinity of the project site have been exposed to various types and levels of anthropogenic noise from recreational boating to the15–20 trains that pass daily over the Union Pacific Railroad bridge. Harbor seals have also been exposed to in-water construction activities at the site and animals are likely tolerant or habituated to anthropogenic disturbance, including pile driving. For example, in October 2002, the Union Pacific Railroad replaced the existing wooden pile trestle bridge spanning the Parsons Slough Channel with a 165 ft (50.3 m) slab girder bridge. Biological monitors reported that harbor seals were present during construction and came and went from the site without any visible signs of stress or undue harassment (MACTEC Engineering and Consulting, 2003).

Based on these studies and monitoring reports, NMFS has determined that harbor seals exposed to sound levels exceeding the Level B harassment thresholds (120 dB for non-pulse; 160 dB for pulse) may exhibit temporary avoidance behavior. The most likely impact to harbor seals from the sheet pile and end-bearing pile installation would be temporary disruption of resting patterns because individual harbor seals may abandon haul out sites and leave the area during construction activities. However, the scheduling of construction activities during the non-breeding season will avoid more severe effects, such as reduced pup survival due to mother-pup separation and interrupted suckling bouts. Temporary hearing loss is unlikely for those harbor seals that enter into the zone of Level B harassment because source levels from vibratory pile driving are not loud enough to induce TTS. Furthermore, the short duration of impact pile driving and close proximity to the source necessary to induce TTS makes it unlikely that harbor seals would be exposed to source levels loud enough to induce TTS. Permanent hearing loss or other harm is not anticipated due to monitoring and mitigation efforts (described below) and the low source levels of pile driving hammers to be used in this project; however, even without mitigation measures, it is unlikely that harbor seals would experience Level A harassment,

serious injury, or mortality because of the close proximity to the source necessary to induce these types of impacts and the avoidance behavior expected of harbor seals during pile driving activities.

Anticipated Effects on Habitat

A detailed description of the anticipated effects on habitat can be found in NMFS' October 5, 2010 **Federal Register** notice (75 FR 61432) and are summarized here.

The action would permanently alter habitat within the project footprint; however, harbor seals haul-out in many locations throughout the estuary, and the action is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual harbor seals or their population. Long-term operation of the sill is expected to result in the conversion of intertidal habitat to subtidal habitat, which will have no adverse effect and possibly a long-term beneficial effect on harbor seals by improving ecological function of the slough, such as higher species diversity, more species abundance, larger fish, and better habitat. It is unlikely that the sill structure itself, when completed, will result in long-term adverse effects on harbor seal movements through the slough because the sill structure allows for continued access to Parsons Slough by aquatic species, including harbor seals. Harbor seals and forage fish may occupy the same habitat, and harbor seal distributions within the estuary reflect foraging locations to some extent. Noise from pile-driving would result in degradation of in-water habitat; however, this impact would be short term and site-specific, and habitat conditions would return to their pre-disturbance state shortly after the cessation of in-water construction activities. NMFS has determined that the project is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or the food sources that they utilize.

Mitigation Measures

In order to issue an incidental take authorization (ITA) 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 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 (where relevant).

The applicant has proposed mitigation measures in their application for reducing impacts to environmental resources. For example, installing end-bearing piles and sheet pile with a vibratory hammer instead of an impact hammer will introduce less sound into the marine environment and prevent marine mammals from being exposed to injurious levels of sound. Some of the following mitigation measures were developed by the NOAA Restoration Center, Southwest Region, and accepted by NMFS while others were developed in discussions between the applicant and NMFS' Office of Protected Resources. These required mitigation measures are designed to eliminate the potential for injury and reduce Level B harassment of marine mammals.

Establishment of Safety Zones and Shut Down Requirements

Vibratory pile driving does not result in source levels that are at or above NMFS' harassment threshold for Level A harassment; therefore, shut down zones would not be required for vibratory pile driving. For impact pile driving, the isolpleth for the Level A harassment threshold (190 dB re 1 microPa rms) is modeled to be within 10 ft (3 m) of end-bearing piles driven with an impact hammer and 5 ft (1.5 m) of sheet piles driven with an impact hammer. The NOAA Restoration Center, Southwest Region, will delay impact pile driving if a harbor seal comes within 33 ft (10 m) of the pile being driven, which further reduces the risk of Level A harassment. In addition, if an impact hammer is required during construction, cushioning blocks will be used to help attenuate the sound. At the commencement of impact pile driving, the NOAA Restoration Center, Southwest Region, will conduct in-water acoustic monitoring for the purpose of verifying the estimated safety zones. Based on acoustic monitoring data collected during impact pile driving, the NOAA Restoration Center, Southwest Region, may establish a new safety zone where sound levels do not exceed 190 dB rms. Finally, under the terms of the IHA issued by the USFWS, in-air sound levels associated with construction activities will also be monitored.

Construction Timing

Pile driving is anticipated to occur during an 11 to 15 week period beginning in November 2010, and ending in February 2011. This work window was selected to coincide with the non-pupping season for harbor seals and avoid haul-out site abandonment during pupping season that may result in reduced pup survival due to mother/pup separation and interrupted suckling bouts. The work window also coincides with the USFWS' required construction work window to avoid the peak pupping period for sea otters (75 FR 42121, July 20, 2010). In addition, in-water construction activities such as pile driving will be conducted during high tide when haul-out sites are inaccessible, and harbor seals are largely absent from Parsons Slough (Maldini *et al.,* 2009).

Limited Use of Impact Hammer

All piles will be installed using a vibratory pile driver unless sufficient depth cannot be reached, at which point an impact hammer may be used. If an impact hammer is required, cushioning blocks will be used as an attenuation device to reduce hydroacoustic sound levels and avoid the potential for injury. These actions would also serve to reduce impacts to harbor seals.

Mitigation Monitoring

Monitoring during construction of the sill will occur from an observation post adjacent to the Union Pacific railroad bridge as well as from a zodiac. Monitoring will be conducted by qualified, NMFS-approved protected species observers (PSOs). On a daily basis, construction monitoring will begin 30 minutes prior to the initiation of construction activities and continue until 30 minutes after construction activities have ceased for the day. The PSO will maintain a log that documents numbers of marine mammals present before, during, and at the end of daily construction activities. In addition, the PSO will record basic weather conditions (ambient temperature, tidal activity, precipitation, wind, horizontal visibility, *etc.*), as well as marine mammal behavior.

The PSO will have the authority to cease construction if a harbor seal is detected within or approaching the safety zone or if an animal appears injured. Within 30 days of the completion of the sill construction, a report will be completed and submitted to NMFS that will include a summary of the daily log maintained by the PSO during construction. In addition, the report will include an assessment of the number of harbor seals that may have been harassed as a result of pile driving activities, based on direct observation of harbor seals observed in the area.

Soft Start to Pile Driving Activities

A "soft start" technique will be used at the beginning of each pile installation to allow any harbor seals that may be in the immediate area to leave before the

activity reaches its full energy. The soft start requires contractors to initiate pile driving with a vibratory hammer for 15 seconds at reduced energy followed by a 1-minute waiting period. This procedure will be repeated two additional times. Due to the short duration of impact pile driving (typically lasting between 1 and 10 minutes), the traditional ramp-up requirement does not apply because it actually increases the duration of noise emitted into the environment, and monitoring should effectively detect harbor seals within or near the proposed impact pile driving shut down zone. If any harbor seals are sighted within or approaching the 33 ft (10 m) shut down zone prior to pile driving, the construction contractor will delay pile-driving until the animal has moved outside and is on a path away from the safety zone or after 15 minutes have elapsed since the last sighting.

NMFS has carefully evaluated the applicant's mitigation measures. NMFS accepted some of the applicant's measures, such as the seasonal timing of construction, suggested additional mitigation measures like the establishment of a 33 ft (10 m) safety zone and hydroacoutic monitoring to measure sound pressure levels from pile driving, and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable 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.

Based on our evaluation of the applicant's measures, as well as other measures developed by NMFS in cooperation with the applicant, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, 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 ITAs 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 in the action area.

Monitoring during construction of the sill would occur from an observation post adjacent to the Union Pacific railroad bridge, as well as from a zodiac. Monitoring would be conducted by qualified, NMFS-approved PSOs. On a daily basis, construction monitoring would begin 30 minutes prior to the initiation of construction activities and continue until 30 minutes after construction activities have ceased for the day. The PSO would maintain a log that documents numbers of marine mammals present before, during, and at the end of daily construction activities. In addition, the PSO would record basic weather conditions (ambient temperature, tidal activity, precipitation, wind, horizontal visibility, *etc.*), as well as marine mammal behavior.

The PSO would have the authority to cease construction if a harbor seal is detected within or approaching the safety zone or if an animal appears injured. Within 30 days of the completion of the sill construction, a report would be completed and submitted to NMFS that would include a summary of the daily log maintained by the PSO during construction. In addition, the report would include an assessment of the number of harbor seals that may have been harassed as a result of pile driving activities, based on direct observation of harbor seals observed in the area.

Estimated Take by Incidental 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 stock in the wild by causing disruption of behavioral patterns, including but not limited to, migration, breathing, nursing, breeding, feeding, or shelter [Level B harassment].

Based on the NOAA Restoration Center, Southwest Region's application and subsequent analysis, the impact of the described pile driving operations may result in, at most, short-term modification of behavior by small numbers of harbor seals within the action area. Harbor seals may avoid the area or halt any behaviors (*e.g.,* resting) when exposed to anthropogenic noise. Due to the abundance of suitable resting habitat available in the greater Elkhorn Slough estuary, the short-term displacement of resting harbor seals is not expected to affect the overall fitness of any individual animal.

Current NMFS practice regarding in-water exposure of marine mammals to anthropogenic noise is that in order to avoid the potential for injury of marine mammals (*e.g.,* PTS), pinnipeds should not be exposed to sounds of 190 dB rms or above. This level is considered precautionary as it is likely that more intense sounds would be required before injury would actually occur (Southall *et al.,* 2007). Potential for behavioral harassment (Level B) is considered to have occurred when marine mammals are exposed to sounds at or above 160 dB rms for impulse sounds (*e.g.,* impact pile driving) and 120 dB rms for non-pulse noise (*e.g.,* vibratory pile driving), but below the thresholds mentioned above. These levels are considered to be precautionary.

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 is 90 dB rms re 20 microPa. In-air noise calculations from using an impact pile driver predict that noise levels will reach 90 dB rms re 20 microPa within 600 ft (183 m) for end-bearing piles and 450 ft (137 m) for sheet piles. For installation using a vibratory hammer, noise levels will reach 90 dB rms within 100 ft (30 m) of the end-bearing pile and 120 ft (36.6 m) for sheet pile. Harbor seals are known to haul-out on the mudflats 200 ft (61 m) east of the work site and 680 ft (207 m) west of the work site, therefore, in-air noise may contribute to harassment for the proposed action.

Estimated distances to NMFS' current threshold sound levels from pile driving during the Parsons Slough Sill Project are presented in Table 3 below. These estimates are based on the worst case scenario of driving the H-piles and sheet piles but would be carried over for all pile driving. Note that despite short distances to the Level A harassment isolpleth, the NOAA Restoration Center, Southwest Region, will implement a 10 m safety zone until empirical pile driving measurements can be made and distances to this threshold isopleths can be verified.

TABLE 3—UNDERWATER DISTANCES TO NMFS HARASSMENT THRESHOLD LEVELS DURING PILE DRIVING (dB RE: 1μPA RMS)

Pile type	Hammer type	Sound levels (rms)		
		190 dB	160 dB	120 dB
H-Piles	Impact	3 m (10 ft)	227 m (745 ft)	n/a.
H-Piles	Vibratory	0	n/a.	1,140 m (3,740 ft).
Sheet Pile	Impact	1.5 m (5 ft)	75 m (245 ft)	n/a.
Sheet Pile	Vibratory	0	n/a	2,256 m (7,400 ft).

TABLE 4—AIRBORNE DISTANCES TO NMFS HARASSMENT THRESHOLD LEVELS DURING PILE DRIVING (dB RE: 20μPA RMS)

Pile type	Hammer type	Sound level (rms)
		90 dB
H-Piles	Impact	600 m.
H-Piles	Vibratory	100 m.
Sheet Pile	Impact	450 m.
Sheet Pile	Vibratory	120 m.

It is difficult to estimate the number of harbor seals that could be affected by the installation of end-bearing piles and sheet pile because the animals only venture in the project areas to haul-out during the day when the tide is low. In-water construction will occur near several haul-out sites and, although the construction activities are planned to take place during slack tide (some of which will be on either side of high tide, when harbor seals are less likely to be present), there may still be animals exposed to sound from pile driving even if the number of individual harbor seals expected to be encountered is very low. These individuals would most likely be adult males and females, as well as juveniles. The NOAA Restoration Center, Southwest Region requests, and NMFS proposes, authorization to take 2,000 individual harbor seals incidental to pile driving activities over the course of the project (November XX, 2010 through February 28, 2011). This is an estimate based on the average number of harbor seals that occupy Parsons Slough during the day (100) multiplied by the total number of days the applicant expects pile driving activities to occur (20 days). NMFS considers this to be an over-estimate for the following reasons: (1) As mentioned above, haul-out sites are inaccessible to harbor seals during high tide, and NMFS would not expect harbor seals to be affected by pile driving activities during the days/times when pile driving and high tide events co-occur; (2) harbor seals are likely absent from Parsons Slough at night when they are likely foraging in Monterey Bay and will not be exposed to sound generated during pile driving that is proposed to take place in the evening hours (no more than 5 hrs at a time); and, (3) based on previous survey effort conducted in Parsons Slough, harbor seals would move out of the disturbance area when construction activities are initiated and move west (downstream) towards Seal Bend until the end of construction.

Negligible Impact and Small Numbers Analysis and Determination

The regulations implementing the MMPA found at 50 CFR 216.103 define "negligible impact" 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. In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities (none of which would be authorized here); (2) the number and nature of anticipated injuries (none of which would be authorized here); and (3) the number, nature, and duration of Level B harassment, and the context in which the takes occur *(e.g.,* will the takes occur in an area or time of significance for harbor seals, are takes occurring to a small, localized population?).

As described above, harbor seals will not be exposed to activities or sound levels which will result in injury (*e.g.,* PTS), serious injury, or mortality. Takes will be limited to Level B behavioral harassment. Pile driving will take place in the relatively shallow estuarine waters of Elkhorn Slough and affect harbor seals that belong to a stock that occurs throughout California. Although two harbor seal haul-outs are located within 300–400 ft of the action area (waters around the Union Pacific Railroad bridge), the Parsons Slough Complex is not considered to be an important habitat for harbor seals compared to other sites in the area (*e.g.* Seal Bend). NMFS has determined that no injuries or mortalities are anticipated to occur as a result of the proposed action, and none are to be authorized. In addition, harbor seals in the area are not expected to incur hearing impairment (*i.e.,* TTS or PTS) or non-auditory physiological effects. Although it is possible for some individual harbor seals to be exposed to sounds from pile driving activities more than once, the extent of these multi-exposures are expected to be limited by the constant movement of harbor seals in and out of Elkhorn Slough and the timing of in-water construction to coincide with periods when the animals are less likely to be present.

Pacific harbor seals are not listed as depleted under the MMPA or threatened or endangered under the Endangered Species Act (ESA). Although populations of Pacific harbor seals were greatly depleted by the end of the 19th century due to commercial hunting, the population has increased dramatically during the last half of the 20th century and appears to be stabilizing at what may be their carrying capacity (Caretta *et al.,* 2009). The amount of take the NOAA Restoration Center, Southwest Region, requests, and NMFS authorizes is considered small (less than 6 percent) relative to the estimated population of 34,233 Pacific harbor seals.

Pacific harbor seals may be temporarily impacted by pile driving noise. However, these animals are expected to avoid the area, thereby reducing exposure and impacts. In addition, although the sill project is expected to take 11 to 15 weeks to complete, the installation of end-bearing piles and sheet pile would only occur for approximately 20 days. Further, the Union Pacific Railroad bridge that is located in the vicinity of the project site has approximately 15–20 trains passing over it each day and harbor seals haul-out on the mud flats located on either side of the bridge. During a previous project at this site involving pile driving, harbor seals were observed to be present during construction and reportedly entered and exited the area without any visible signs of stress or undue harassment (MACTEC Engineering and Consulting 2003). Therefore, animals are likely tolerant or habituated to anthropogenic disturbance, including pile driving. Finally, breeding and pupping occur outside of the proposed work window; therefore, no disruption to reproductive behavior is anticipated. There is no anticipated effect on annual rates of recruitment or survival of the affected harbor seal population.

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 determined that the Parsons Slough sill project will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the Parsons Slough project will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Endangered Species Act (ESA)

No ESA-listed species under NMFS' jurisdiction are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation for issuance of the proposed IHA under the ESA is not required. The NOAA Restoration Center, Southwest Region, completed a formal consultation with the USFWS because the project is within the range of the southern sea otter, which is listed as threatened under the ESA. On October 6, 2010, the U.S. Fish and Wildlife Service issued a Biological Opinion and Incidental Take Statement to the NOAA Restoration Center, Southwest Regional pursuant to Section 7 of the ESA. The Biological Opinion concluded that impacts from the NOAA Restoration Center, Southwest Region's project would not jeopardize the continued existence of ESA-listed southern sea otters.

National Environmental Policy Act (NEPA)

Pursuant to NEPA, the general impacts associated with the design and construction phases of the proposed action are described in the Community-Based Restoration Program (CRP) Programmatic Environmental Assessment (PEA) and the Supplemental Programmatic Environmental Assessment (SPEA), which were prepared by the NOAA Restoration Center, Southwest Region. The NOAA Restoration Center, Southwest Region, completed a Targeted Supplemental Environmental Assessment (TSEA) to include all project-specific impacts not described in the CRP PEA/SPEA. NMFS considered the TSEA to be adequate and adopted it on November 22, 2010. On November 23, 2010, NMFS issued a Finding of No Significant Impact on the TSEA.

Authorization

As a result of these determinations, NMFS has issued an IHA to the NOAA Restoration Center, Southwest Region, for the take of marine mammals incidental to the Parsons Slough project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 23, 2010.

P. Michael Payne,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XAO61

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2011. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2011.

DATES: The Atlantic Shark Identification Workshops will be held January 6, February 3, and March 10, 2011.

The Protected Species Safe Handling, Release, and Identification Workshops will be held January 11, January 13, January 24, February 16, February 23, March 16, and March 23, 2011.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Vero Beach, FL; Norfolk, VA; and Corpus Christi, TX.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Portland, ME; Manahawkin, NJ; Daytona Beach, FL; Key Largo, FL; Ocean City, MD; Galveston, TX; and Clearwater, FL.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit which first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 52 free Atlantic