

Whaling Commission (IWC) approved a quota of 620 gray whales for an aboriginal subsistence harvest for the years 1998 through 2002. The basis for the quota was a joint request by the Russian Federation (for a total of 600 whales) and the United States (for a total of 20 whales). The subsistence and ceremonial needs of the Makah Indian Tribe were the foundation of the United States' request to the IWC. On July 12, 2001, NMFS published an EA on issuing a quota to the Makah Indian Tribe for a subsistence hunt on gray whales for the years 2001 and 2002 (66 FR 37641, July 19, 2001.) The EA is posted on NMFS website at: <http://www.nmfs.noaa.gov/prot—res/prot—res.html> under "New Arrivals".

The IWC's 54th annual meeting is scheduled for May of 2002. NMFS is preparing an EA on issuance of a quota to the Makah Indian Tribe for a subsistence hunt on gray whales for the years 2003 through 2007 in the event that the IWC renews a 5-year aboriginal subsistence quota for gray whales. NMFS is evaluating the following four alternatives: Alternative 1 - Grant the Makah Tribe a quota of 5 whales per year over 5 years with restrictions that would allow a limited hunt on the gray whale summer feeding aggregation.

Alternative 2—Grant the Makah Tribe a quota of 5 whales per year over 5 years with restrictions to target the hunt on migrating whales.

Alternative 3—Grant the Makah Tribe a quota of 5 whales per year over 5 years without time or area restrictions.

Alternative 4—(No Action)—Do not grant the Makah Tribe a quota.

#### Information Solicited

To ensure that the review is comprehensive and based on the best available information, NMFS is soliciting information and comments from any interested party concerning the issuance of a gray whale quota of 5 whales per year over 5 years to the Makah Tribe for the years 2003 through 2007. NMFS is particularly interested in any new information on the affected environment or environmental consequences that has become available since the last analysis was completed. It is requested that data, information, and comments be accompanied by (1) supporting documentation, and (2) the name, address, and affiliation of person submitting data. Following the issuance of the draft EA NMFS will solicit additional public input.

Dated: November 16, 2001.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 110801C]

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

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

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from the California Department of Transportation (CALTRANS) for an authorization to take small numbers of marine mammals by harassment incidental to construction of a replacement bridge for the East Span of the San Francisco-Oakland Bay Bridge (SF-OB). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize CALTRANS to incidentally take, by harassment, small numbers of California sea lions, Pacific harbor seals, and possibly gray whales in San Francisco Bay.

**DATES:** Comments and information must be received no later than December 26, 2001.

**ADDRESSES:** Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Simona Perry Roberts, (301) 713–2322, ext 106; or Tina Fahy, (562) 980–4023.

#### 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, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as:

...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 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. The MMPA defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild ("Level A harassment"); or (b) 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").

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On September 14, 2001, NMFS received a request from CALTRANS requesting an Incidental Harassment Authorization (IHA) for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsii*), and gray whales (*Eschrichtius robustus*) incidental to construction of a replacement bridge for the East Span of the SF-OB.

### Project Description

The East Span Project will provide a seismically upgraded vehicular crossing for current and future users. The existing East Span must be replaced or retrofitted because it is not expected to withstand a maximum credible earthquake on the San Andreas (Richter 8) or Hayward (Richter 7.25) faults, it does not meet lifeline criteria for providing emergency relief access following a maximum credible earthquake, and it does not meet current operational and safety design standards.

The new bridge will be constructed north of the existing East Span and will be approximately 3,514 meters (m) (2.18 mi) long and approximately 70 m (230 ft) wide, including a 15.3 m (50 ft) minimum space between the east and westbound bridge decks. The bridge decks will be side-by-side, except for the double deck portion between the existing Yerba Buena Island (YBI) tunnel and the transition structures where the double deck structure becomes two parallel structures. Each deck will consist of five traffic lanes and inside and outside shoulders. The traffic lanes will be 3.6 m (12 ft) wide with 3 m (10 ft) wide shoulders. A bicycle/pedestrian path will be constructed on the south side of the eastbound structure and will be 4.7 m (15.5 ft) wide. The East Span Project would also replace the eastbound on-ramp on YBI. The existing ramp needs to be dismantled to construct the new bridge. The ramp would be rebuilt and would meet current design and safety standards.

The foundations for the piers of the replacement East Span will consist of large diameter steel pipe piles that will be driven into the Bay floor. Current plans anticipate driving a total of 189 2.5 m (8.2 ft) diameter piles and 70 1.8 m (5.9 ft) diameter steel pipe piles. Each pile is expected to consist of two or more segments; the first segment will be driven to an established depth, then the next segment(s) will be welded on and driven in succession until the pile is driven to its final or "tip" depth (or elevation). However, the contractor could choose to drive the piles in one piece. Some piles will be battered, meaning that they will be driven in at an angle, essentially splaying out from the pier to provide additional stability. The rest would be vertical piles. The larger piles will support the skyway and main span sections of the replacement bridge; they will be driven to depths ranging from about -66 m to about -108 m (-256 ft to -358 ft), with most being driven to about -95 m (-312 ft). The smaller diameter piles will support the

Oakland Touchdown structures; they will be driven to "tip" depth ranging from about -41 m to about -65 m (-135 ft to -213 ft).

Due to the untested nature of large hammers and piles in San Francisco Bay, a pile installation demonstration was conducted in October through December of 2000. This Pile Installation Demonstration Project (PIDP) was an investigation that provided an opportunity to gather information on construction activities and potential impacts to marine life. CALTRANS obtained an IHA from NMFS for the PIDP, which established a safety zone around each pile driving site where underwater sound pressure levels (SPLs) were anticipated to equal or exceed 190 decibels (dB) re 1 micro-Pascal (micro-Pa) with a maximum root mean square sound pressure level averaged over a 31 millisecond time frame (RMS (impulse)). This IHA also included several other stipulations about pile driving operations and requirements for marine mammal monitoring and reporting. During the PIDP, 3 large steel piles each required approximately 5 hours total driving time to reach the specified "tip" depth.

Based on the PIDP experience, it is expected that the 259 in-Bay piles could require about 1,300 hours of total pile driving time. However, the contractor will be allowed to drive simultaneously at multiple locations. Furthermore, it is possible that piles necessary for the YBI portion, the skyway, and the Oakland approach structures would be driven simultaneously. Pile driving will be allowed only from 7 AM to 7 PM, 7 days a week.

In addition to in-Bay pile driving, the East Span Project will include pile driving on YBI for construction of the YBI transition structures on the northeastern side of the island. The piles will be steel driven piles, which are conventionally used in building construction. Unlike in-Bay pile driving which may require hammer energy levels up to 1,700 kilojoules (kJ), pile driving activity on YBI will require hammer energy levels less than 100 kJ. A total of approximately 2,950 piles will be needed to support the YBI transition structures. Each pile will require about 30 minutes of driving time; therefore, it is estimated that the East Span Project will include a total of about 1,500 hours of driving time for piles on YBI.

To construct all permanent structures, contractors will install piles to found temporary structures, supports, falsework, a barge dock and trestles. These temporary structures are required to facilitate construction and support the permanent structures until they are

self-supporting. Since the temporary structures will be contractor designed, their exact nature (size, type, quantity, etc.) will not be known until the contractors submit their plans to CALTRANS. While the number of piles placed to found the structures will be large, it is expected that they will be of a smaller size than the permanent structures since they are temporary and are not designed for traffic or seismic loading. There may be 1,000 to 2,000 temporary piles. These piles are expected to be 0.5 m (18 in) to 0.9 m (36 in) in diameter and 12 m (40 ft) to 30 m (100 ft) long. Driving time for each pile is likely to be 3 to 5 hours.

The East Span Project would take 7 years to complete, plus 2 years to remove the existing East Span. Seismic safety and lifeline criteria would be achieved for westbound traffic 4 years after the start of construction and, for eastbound traffic, 5 years after the start of construction. Construction is scheduled to begin in early 2002. For more detailed description on the work proposed by CALTRANS, please refer to the CALTRANS application and/or the Final Environmental Impact Statement (FEIS) prepared by the Federal Highway Administration (FHWA).

### Description of the Marine Mammals Potentially Affected by the Activity

General information on California sea lions, Pacific harbor seals, gray whales and other marine mammal species found in California waters can be found in Forney et al. (2000) and Barlow *et al.* (1998). The marine mammals most likely to be found in the SF-OBV area are the California sea lion and Pacific harbor seal. From December through May gray whales may also be present in the SF-OBV area.

#### California Sea Lions

While there is evidence that California sea lions historically used the Bay, they are rarely observed hauled out in the Bay (Bauer, 1999). However, since at least 1987, sea lions have been observed occupying the docks near Pier 39 in San Francisco, approximately 5.7 km (3.5 mi) from the project site. Pier 39 has now become a regular haul-out site for California sea lions. Currently, no other California sea lion haul-out sites have been identified in the Bay. Approximately 85 percent of the animals hauled out at the Pier 39 site are males, and no pupping has been observed at this site or any other site in the Bay (Lander pers. comm. to CALTRANS, 1999).

The number of California sea lions hauled out at Pier 39 ranged from 63 to 737 in 1998 and from 5 to 906 in 1997

(Marine Mammal Center, Sausalito data). For both years, the lows occurred in June and the highs occurred in August. Most recently, 831 sea lions were observed on K dock at Pier 39 in October 1999. The trend in annual movement is for sea lions to first appear at the site after returning from the Channel Islands breeding area (over 483 km or 300 mi to the southwest) at the beginning of August (Bauer, 1999). Around late winter, the sea lions travel south to the breeding grounds, and numbers at the Bay haul-out site decline. The lowest numbers of sea lions at the Pier 39 haul-out are usually observed from May through July. However, the number of sea lions at the haul-out site fluctuates quite a bit throughout the year and even from one week to the next. For example, in June of 1998, a maximum of 574 sea lions was observed on June 7<sup>th</sup> while a low count of 63 was observed on June 25<sup>th</sup> (Lander pers. comm. to CALTRANS, 1999).

While little information is available on the foraging patterns of California sea lions in the Bay, individual sea lions have been observed feeding in the shipping channel to the south of YBI on a fairly regular basis (Grigg pers. comm. to CALTRANS, 1999). Foraging by sea lions that utilize the Pier 39 haul-out site primarily occurs in the Bay, where they feed on prey items such as Pacific herring, northern anchovy and sardines (Hanni, 1995).

#### *Pacific Harbor Seals*

Pacific harbor seals are the only species of marine mammal that breed and bear young in the Bay (Howarth and Abbott, 1999). There are 12 haul-out sites and rookeries in the Bay and of those, only eight are used by more than a few animals at a time. Only three sites in the Bay are regularly used by more than 40 harbor seals at any one time; these are Mowry Slough, located in the South Bay, YBI, and Castro Rocks, located in the Central Bay (Spencer, 1997). The three closest haul-out sites to the project location are at YBI, Angel Island, and Castro Rocks. The most recent aerial harbor seal count, conducted by D. Hanan of the California Department of Fish and Game, found 477 individuals in the Bay (Greene, pers. comm. to CALTRANS, 1999). It is important to note that not all harbor seals were counted, as some may have been under water during the survey.

Harbor seals are present in the Bay year-round and use it for foraging, resting and reproduction. Peak numbers of hauled-out harbor seals vary by haul-out site depending on the season. Results of a study of 39 radio-tagged

harbor seals in the Bay found that most active diving occurred at night and a majority of the diving time was spent in seven feeding areas in the Bay. The two feeding areas located closest to the project site are just to the south of YBI and north of Treasure Island. This study also found that the seals dove for a mean time of 0.50 minutes to 3.33 minutes. Mean surface intervals or the mean time the seals spent at the surface between dives ranged from 0.33 minutes to 1.04 minutes. Mean haul-out periods ranged from 80 minutes to 24 hours (Harvey and Torok, 1994).

Pupping season in the Bay begins in mid-March and continues until about mid-May. Pups nurse for only 4 weeks and mating begins after pups are weaned. In the Bay, mating occurs from April to July and molting season is from June until August (Schoenherr, 1995; Kopec and Harvey, 1995).

#### *Pacific Harbor Seal Haul-Out Sites in the Vicinity of the East Span Project*

YBI is located in the Central Bay, adjacent to man-made Treasure Island. The SF-OBB passes through a tunnel on YBI. An important harbor seal haul-out is located on a rocky beach on the southwest side of YBI (Kopec and Harvey, 1995). Harbor seal re-sightings at the YBI haul-out site indicate long-term usage of the site (Spencer, 1997). Pile driving activity for the East Span Project will be performed on the northwest side of YBI and in the San Francisco Bay, between the northwest side of the island to the Oakland Touchdown area. The harbor seal haul-out site is located about 450 m (1,476 ft) from the closest planned pile driving activity on land and about 950 m (3,117 ft) from the closest planned pile driving activity in the Bay.

Harbor seals haul out year-round on YBI, but it is not considered a pupping site as no births have been observed there. Occasionally, pups have been seen at an average of 1 pup per year, though more recently, 7 pups were observed at one time in May, 1999 (San Francisco State University unpublished records, 1998-9). In a study of the haul-out site conducted between 1989 and 1992, males comprised 83.1 percent of the seals whose gender could be determined (Spencer, 1997). Peak numbers of harbor seals at this haul-out site have been observed from November to February. The maximum reported number of seals hauled out at one time is 344, counted in January 1992 (Kopec and Harvey, 1995). More recently, the number of seals counted at YBI ranged from 0 to 296 for the period May 1998 to January 1999. Mean monthly counts for the same period range from

approximately 15 in September 1998 to 107 in June 1999 (San Francisco State University, unpublished records 1998-1999). The abundance of harbor seals at this site during the winter months likely coincides with the presence of spawning Pacific herring near the island.

Angel Island is a small haul-out site located approximately 7.4 km (4.6 mi) from the project site. A maximum count of 15 seals was observed in the 1980s and most recently, six harbor seals were seen in 1989. No pupping has been observed at the site.

The next closest haul-out site in the Bay is approximately 14 km (8.7 mi) away at Castro Rocks, near the Richmond end of the Richmond-San Rafael Bridge. The Castro Rocks haul-out site is a recognized pupping site. A maximum of 176 harbor seals were observed at Castro Rocks in October 1999 (San Francisco State University unpublished records, 1998-99).

#### *Gray Whales*

The vast majority of all gray whales are found in the Pacific Ocean along the western coastline of North America. Here, they spend their winters in the waters off Baja California and migrate more than 9,000 kilometers (5,600 miles) north to spend their summers north of Alaska. They are typically seen off the California coastline from December through May as they migrate northward to the Bering and Chukchi Seas, and again in the return trip to Baja California.

Gray whales have been sighted more frequently in recent years in San Francisco Bay. Reduced food supply in the Bering Sea has been suspected as the most probable cause. Gray whales have been sighted in the Bay in areas off Sausalito in Richardson Bay and the tip of the Tiburon Peninsula (approximately 11 km or 7 mi northwest of the project area) and as far south as the San Bruno Shoals area (approximately 23 km or 14 mi southwest of the project area). Gray whales have been observed foraging in these areas. Sightings in the Bay have typically been made from December through May, during the whales' coastal migration. Calves may be expected during the migration north with mothers in March and May. Most recently, in February 2001, a pod of gray whales was observed near the Dumbarton Bridge in the South Bay.

Gray whales heading to the San Bruno Shoals area would pass beneath the SF-OBB. It is likely that some of the whales that enter the Bay would swim through the two deep-water shipping channels beneath the West Spans of the bridge.

Though the number of sightings of gray whales to the east of YBI and in the immediate vicinity of the SF-OBBS are low, they are not precluded from swimming there to reach the San Bruno Shoals area or foraging near or in these areas in the future.

#### **Potential Effects on Marine Mammals and Their Habitat**

At this time, NMFS considers that underwater SPLs above 190 dB re 1 micro-Pa RMS (impulse) could cause temporary hearing impairment (Level B harassment) in harbor seals and sea lions and SPLs above 180 dB re 1 micro-Pa RMS (impulse) could cause temporary hearing impairment (Level B harassment) in whales (Fahy, personal communication 2001). The effects of elevated SPLs on marine mammals may include avoidance of an area, tissue rupture, hearing loss, disruption of echolocation, masking, habitat abandonment, aggression, pup/calf abandonment, and annoyance. Therefore, CALTRANS has determined that the pile driving outlined in the project description has the potential to harass California sea lions, Pacific harbor seals, and gray whales that may be swimming, foraging, or resting in the project vicinity.

During the 2-month PIDP construction period, sound measurements were taken during pile driving of three piles, and marine mammals were monitored at the project site and at the harbor seal haul-out site on YBI. Results of observable effects of the PIDP on marine mammals is summarized in the Marine Mammal Impact Assessment Report prepared by CALTRANS in August 2001 (CALTRANS 2001). More specifically, the demonstration provided CALTRANS an opportunity to measure resulting SPLs both in air and under water, record impacts to marine mammals and experiment with measures to reduce harm to marine mammals. Sixty-eight pinnipeds (55 harbor seals and 13 sea lions) were sighted during monitoring activities. Of this total, 57 pinnipeds (47 harbor seals and 10 sea lions) were seen during non-pile driving activities. Only eight harbor seals and three sea lions were observed near the PIDP site during actual pile driving, which totaled 12 hours and 51 minutes. In addition, up to 85 harbor seals per monitoring period hauled out at the semi-protected cove on the southwestern side of YBI, approximately 1,500 m (4,920 ft) from the pile-driving area. No gray whales were observed.

The East Span Project is not expected to result in any significant impacts to marine mammal habitat. Short-term impacts will include the minimal

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

#### *California Sea Lions*

Of the 13 total sea lions observed during the PIDP construction period, three individual sea lions were observed in the PIDP construction site within and beyond the 500-m (1,640-ft) safety zone during the actual driving of piles. The three sea lions rapidly swam and porpoised out of the area when pile driving began, indicating possibly: (1) increased sensitivity to the pile driving noise in air and/or water, (2) less conditioning to anthropogenic noise, or (3) a difference of the level of sound received by the sea lions resulting from varying human, environmental (ambient) and hammer magnitude or conditions at the time of pile driving. Alternatively, since the three sea lions were present at the start of pile driving, their response could indicate that they were startled by the noise (SRS Technologies, 2001). The frequency and duration of the noise and whether underwater or airborne sounds start suddenly or gradually, creating a ramping effect (as usually performed for the PIDP), may also influence the behavior of these mammals. However, none of these factors could be explored in detail within the scope of the demonstration project.

Noise levels from the East Span project within and beyond a 500-m (1,640-ft) safety zone are not expected to result in harassment of the sea lions hauled out at Pier 39 as SPLs would attenuate to below harassment levels by the time they reach the haul-out site, 5.7 kilometers (3.5 miles) from the project site.

#### *Pacific Harbor Seals*

The Richmond Bridge Harbor Seal Survey is currently gathering data on harbor seals at the Castro Rocks and YBI haul-out sites as part of the San Rafael-Richmond Bridge Seismic Retrofit Project monitoring program (see 66 FR 49165, September 26, 2001). A total of 55 harbor seals were observed in the vicinity of the PIDP site during the 2½-month construction period. Of this total, 47 were observed during non-pile driving activities and eight harbor seals

were observed during actual pile driving. The eight harbor seals, which were sighted within the 500 m (1,640 ft) safety zone, seemed to observe the activities around the barge during pile driving while swimming in and out of the safety zone, but did not show any avoidance response during pile driving. Additional observations during the PIDP showed that harbor seals at YBI increased in number during low tide, and responded to activities unrelated to pile driving activities such as helicopter noise, boat traffic and kayakers, with head alerts or flushing of the site when startled or disturbed.

Pile driving could potentially harass those harbor seals that are in the water closer to the project site, whether their heads are above or below the surface. Since no response was observed from harbor seals in the water at YBI during the PIDP project except for initial reaction from airborne noise during driving of unattenuated Pile 1A, it is likely that underwater SPLs resulting from pile driving activity at a distance of about 1,500 m (4,920 ft) or greater would be sufficiently attenuated at the haul-out site. It is unknown whether piles driven closer to YBI would result in underwater SPLs that would disturb harbor seals at the haul-out site. It is estimated that a fraction of the seals hauled out at YBI would potentially be in the water and close to the project site during pile driving activities. Potential harassment would only occur during those times when piles are being hammered, which will include a total of approximately 1,300 hours of in-Bay pile driving and approximately 1,500 hours of pile driving on YBI over the 9-year construction period. The number of harbor seals that could potentially be harassed during the East Span Project would vary based on the location of pile driving activity and the proximity of the seals to the pile driving site.

Harbor seals on the YBI haul-out site are commonly subjected to high levels of disturbance, primarily from watercraft. This is particularly true during the summer, when the numbers of small boats, jet skis, kayaks, etc., in San Francisco Bay increase (San Francisco State University, 1999b). Abandonment of the haul-out site is not anticipated as sound levels from pile driving, both in water and in air, are expected to attenuate sufficiently by the time they reach the site. Although harbor seal pups have been observed at the YBI haul-out site, it is not a recognized pupping site. Therefore, no significant impacts on species recruitment are anticipated.

### Gray Whales

No gray whales were observed during the PIDP. However, gray whales can be expected in the Bay in increasing numbers from December through May during their winter migration to and from Alaska. Noise from the pile driving activities therefore may affect gray whales swimming toward the southern San Bruno Shoals region.

Behavioral responses of gray whales to noise can include avoidance, startle response, and complete abandonment of an area. Noise may elicit short-term disruptions of normal activities similar to seals, such as startle response, agitation, stress, and cessation of foraging activities. Most evidence suggests that whales will avoid loud noises, which may result in a temporary displacement of the animal from typical foraging or traveling areas. Although it is uncertain whether gray whales will be affected by SPLs generated by pile driving during the East Span Project, observations and research from the past 3 years (1999-2001) indicate that fewer than 10 gray whales have been sighted in the Bay on any particular day (Oliver personal communication, 2001). The number of gray whales present in the Bay may increase in the future, since in recent years there have been more frequent sightings of gray whales in the Bay during their migration period. Whether these whales will be in close proximity to the construction area for any period of time is unknown at this time. The primary concern is for whales passing by YBI on the west or east sides while traveling to San Bruno Shoals.

### Mitigation

#### *Establishment of Safety/Buffer Zones*

Prior to commencement of any pile driving, a preliminary 500-m (1,640-ft) radius safety zone for pinnipeds (California sea lions and Pacific harbor seals) will be established around the pile driving site, as it was for the PIDP. The safety zone is intended to include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 mPa RMS (impulse). Once pile driving begins, SPLs will be recorded at the 500-m (1,640-ft) contour. The safety zone radius for pinnipeds will then be enlarged or reduced, depending on the actual recorded SPLs. A 180-dB re 1 mPa RMS (impulse) safety zone for gray whales will be established for pile driving occurring during the gray whale migration season from December through May.

Observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving of a pile segment

begins. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are observed in that time it will be assumed that the animal has moved beyond the safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994). Due to the limitations of monitoring from a boat, there can be no assurance that the zone will be devoid of all marine mammals.

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

A 500-m (1,640-ft) no-entry buffer zone will be established around the haul-out site on YBI to minimize the impact of project-related vessel traffic during the East Span Project on marine mammals. This buffer zone will be established in coordination with the U.S. Coast Guard (USCG). The buffer zone will be delineated with USCG-compliant brightly colored temporary buoys. CALTRANS will establish strict standards on vessel speed for all project-related crafts traveling in the Bay.

#### *Compliance with Equipment Noise Standards*

To mitigate noise levels and, therefore, impacts to California sea lions, Pacific harbor seals, and gray whales, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less

effective than those provided on the original equipment.

### Barrier Systems

CALTRANS proposes to utilize a "marine pile-driving energy attenuator" during all pile driving activities in an attempt to reduce overall sound levels (Mara Melandry, personal communication 2001). This attenuator system would consist of an air bubble curtain, similar to the system tested during the PIDP. The PIDP air bubble attenuator system consisted of a piping system ring that was submerged to the Bay floor where it encircled the pile template and was supplied air from a compressor at the surface. Wursig *et al.* (2000) used a similar system for attenuating noise received by dolphins during pile driving activities for an airport expansion.

### Monitoring

Before issuance of an IHA, a mammal monitoring plan must be prepared and approved by NMFS prior to the start of the East Span Project. The complete monitoring plan must include: (1) a description of the proposed survey techniques that would be used to determine the movement and activity of marine mammals near the construction areas; and (2) scientific rigor that will allow NMFS to verify that any impacts on marine mammal populations from this specific activity are small in number and negligible.

### Visual Observations

NMFS will require safety zone monitoring during all active pile driving and for a period of time (yet to be established) before the entire East Span Project begins. Monitoring of the pinniped and cetacean safety zones will be conducted by a minimum of three qualified NMFS-approved observers for each safety zone. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Observers will likely conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBBS) may not be practical. Pile driving will not begin until the safety zone is clear of marine mammals. But, as described in the Mitigation section, once pile driving of a segment begins, operations will continue uninterrupted until the segment has reached its predetermined depth.

Biological observations will be made using binoculars during daylight hours. In addition to monitoring from boats, monitoring of the YBI haul-out may be conducted during pile driving activity, in coordination with the Richmond

Bridge Harbor Seal survey team. NMFS will also require one or more control sites (harbor seal haul-out sites and the waters surrounding such sites not impacted by the East Span Project's pile driving activities, i.e. Mowry Slough) be designated and monitored for comparison. All observations will be recorded and will include items such as species, numbers, behavior, details of any observed disturbances, time of observation, location, and weather.

#### *Acoustical Observations*

Both airborne and underwater environmental noise levels will be measured as part of the East Span Project.

The purpose of the underwater sound monitoring is to establish the safety zone of 190 dB re 1 micro-Pa RMS (impulse) for pinnipeds and the safety zone of 180 dB re 1 micro-Pa RMS (impulse) for gray whales. Monitoring will be conducted during the driving of the last half (deepest pile segment) for any given pile. One pile in every other pair of pier groups will be monitored. One reference location will be established at a depth of 100 m (328 ft). Sound levels will be measured during the entire driving session at the reference location. Additional spot measurements will be conducted at appropriate depths (near mid water column) 500 m (1,640 ft) distance at two locations west and north. Measurements will be made at other locations either nearer or farther as necessary to establish the approximate distance for the safety zones. Each measuring system shall consist of a hydrophone with an appropriate signal conditioning connected to a sound level meter and an instrument grade digital audiotape recorder (DAT). Overall SPLs shall be measured and reported in the field in dB re 1 micro-Pa RMS (impulse). An infrared range finder will be used to determine distance from the monitoring location to the pile. The recorded data will be analyzed to determine the amplitude, time history and frequency content of the impulse.

Airborne sound levels will be measured at times and locations that are coincidental to the underwater measurement sights. Each system will consist of a type 1 integrating sound level meter connected to a DAT. In addition, airborne sound will also be measured at the YBI haul-out site. Real time amplitude measurement of airborne sound levels will be reported. Linear Peak and RMS impulse SPLs will be reported. Microphones will be fitted with windscreens and calibration will be verified before and after each measurement session. The recorded data

will be analyzed to determine the amplitude, time history and frequency content of the impulse.

#### **Reporting**

NMFS' Southwest Regional Administrator will be notified prior to the initiation of the East Span Project, and coordination with NMFS will occur on a weekly basis, or more often as necessary. NMFS will be informed of the initial SPL measurements taken at the 500-m (1,640-ft) contour and the final safety-zone radius established. Monitoring reports will be faxed to NMFS on a monthly basis during pile driving activity. The monthly report will include a summary of the previous month's monitoring activities and an estimate of the number of seals and sea lions that may have been disturbed as a result of pile driving activities.

Because the East Span Project is expected to continue beyond the date of expiration of this IHA (under a new IHA or under regulations pursuant to section 101(a)(5)(A) of the MMPA), CALTRANS will provide NMFS' Southwest Regional Administrator with a draft final report before 90 days after expiration of this IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days. If no comments are received from NMFS, the draft final report will be considered to be the final report.

#### **Preliminary Conclusions**

NMFS has determined that the short-term impact of pile driving and other activities associated with the East Span Project, as described in this document, should result, at worst, in the temporary modification in behavior of California sea lions and Pacific harbor seals, and potentially gray whales. While behavioral modifications, including temporarily vacating haul-out sites and other areas, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to the preliminary conclusion that this action will have a negligible impact on California sea lion, Pacific harbor seal, and gray whale populations along the California coast.

In addition, no take by injury or death is anticipated and harassment takes should be at the lowest level practicable

due to incorporation of the mitigation measures mentioned previously in this document.

#### **Proposed Authorization**

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of California sea lions, Pacific harbor seals, and gray whales incidental to construction of a replacement bridge for the East Span of the SF-OBBS provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

#### **Information Solicited**

NMFS requests interested persons to submit comments, information, and suggestions concerning this proposed authorization to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Dated: November 19, 2001.

**David Cottingham,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 01-29391 Filed 11-23-01; 8:45 am]

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## **COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

### **Request for Public Comments on Short Supply Request Under the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)**

November 21, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Request for public comments concerning a request for a determination that cuprammonium rayon filament yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and CBTPA.

**FOR FURTHER INFORMATION CONTACT:** For Further Information Contact: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

#### **SUPPLEMENTARY INFORMATION:**

**Authority:** Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the CBTPA, as added by Section 211(a) of the CBTPA; Section 1 and 6 of Executive Order No. 13191 of January 17, 2001.