on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed marine site characterization surveys. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year renewal IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned, or (2) the activities would not be completed by the time the IHA expires and renewal would allow completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:
  1. An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements.
  2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.


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

[FR Doc. 2018–06856 Filed 4–3–18; 8:45 am]
not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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).

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the Bravo Wharf recapitalization project. NMFS made the Navy’s EA available to the public for review and comment, in relation to its suitability for adoption by NMFS in order to assess the impacts to the human environment of issuance of an IHA to the Navy. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216–6, NMFS has reviewed the Navy’s EA, determined it to be sufficient, and adopted that EA and signed a Finding of No Significant Impact (FONSI) in July, 2016. The 2016 NEPA documents are available at https://www.fisheries.noaa.gov/node/23111.

Since this proposed IHA covers a subset of the same work covered in a former IHA, NMFS is preliminarily proposing to rely on this same EA and FONSI document. However, we will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the current IHA request.

History of Request

On July 21, 2015, we received a request from the Navy for authorization of the taking, by Level B harassment only, of marine mammals incidental to pile driving (predominantly vibratory pile driving, with a small amount of impact pile driving as a contingency plan in case of difficult piles) in association with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida. A final version of the application, which we deemed adequate and complete, was submitted on November 17, 2015. We published a notice of a proposed IHA and request for comments on December 7, 2015 (80 FR 75978), and subsequently published final notice of our issuance of the IHA on August 9, 2016 (81 FR 52637). In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA (effective dates originally December 1, 2016 through November 30, 2017). The specified activities are expected to result in the take of individuals from four stocks of bottlenose dolphins (Tursiops truncatus).

On January 23, 2017, the Navy informed NMFS that no work had been performed relevant to the specified activity considered in the MMPA analysis. On February 22, 2017, we published a notice of a revision of the IHA (82 FR 11344), revising the effective authorization dates from March 13, 2017, through March 12, 2018.

On December 5, 2017, the Navy informed NMFS that construction had not yet begun on one of two construction phases authorized under the revised IHA. The Navy attributed delays in progress and inaccuracies in original construction planning due to a combination of: (1) Rain delays, hurricane preparation, and Hurricane Irma, (2) Inefficiencies by the contractor, and (3) Activities influenced by tides, originally unaccounted for in the schedule.

On January 9, 2018, the Navy formally requested that NMFS issue an IHA for one year from May 14, 2018, to May 13, 2019 in order to complete a subset of the construction activity previously covered by the 2017 IHA.

Because this IHA will cover a subset of the take already analyzed and authorized through the previous IHA, we primarily refer back to our previous documents and analysis, which remain germane, and describe any changes here.

Description of the Proposed Activity and Anticipated Impacts

The 2017 IHA covered the installation of 880 single sheet piles installed with a vibratory hammer over 110 days and 20 days of contingency impact driving, for a total of up to 130 construction days. The 2017 IHA authorized the Level B harassment of 370 bottlenose dolphins (330 takes from vibratory pile driving, 40 from impact pile driving), which could occur to any of the four stocks in the area. The Navy did not complete that work, and now requests that this second IHA cover the installation of the remaining 336 steel sheet piles over the course of 43 pile-driving days, plus 10 contingency impact driving days, for a total of 53 days.

To support public review and comment on the IHA that NMFS is proposing to issue here, we refer to the documents related to the previously issued IHA as well as discussing any new or changed information. These previous documents include the Federal Register notice of the issuance of the 2017 IHA for the Navy’s Bravo Wharf (82 FR 11344, February 22, 2017), the Navy’s application, the Federal Register notice of the proposed IHA (81 FR 52637; December 1, 2016), and all associated references and documents.

Potential Effects on Marine Mammals—A detailed description of the proposed vibratory and impact pile driving activities at Bravo Wharf is found in these previous documents. The location, timing (e.g., lack of seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those described in the previous notices, except that only a subset of the number of piles are proposed to be driven here (356 piles over 53 days, versus 880 over 130 days).

Description of Marine Mammals—A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the current IHA. Since issuing the 2017 IHA, NMFS published draft SARs (82 FR 60181; 19 December 2017). In the draft SARs, stock abundance information has preliminary changed for species that have the potential to occur in the activity area but for which take is not anticipated or authorized, which includes North Atlantic right whales and humpback whales. Abundance has changed for two stocks of bottlenose dolphins for which take is authorized: the Western North Atlantic, Northern Florida Coastal, and the Western North Atlantic, southern migratory coastal stocks. However, proposed abundance changes do not affect our estimated take numbers or negligible impact and small numbers determinations, and therefore these changes do not affect our analysis.
potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects.

Estimated Take—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in these previous documents. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. One input into the take estimate, the source levels, was changed to reflect newer information. The original IHA reflected a vibratory pile driving source level of 151 decibels (dB) root mean square (rms), but more recent measurements (measurements of vibratory driving of steel sheet piles during the first year of construction at nearby Wharf C–2 at Naval Station Mayport (DoN 2015) support a higher source level (156 dB rms). The impact pile driving source level of was also corrected from 189 dB rms to 190 rms (CalTrans 2015). The Navy modified their take estimates to reflect these newer values, which NMFS used for issuance of another IHA at Bravo Wharf (83 FR 9287; March 5, 2018). Using the same take estimate methodology described in the 2017 IHA and the updated source levels (which extends the vibratory pile driving Level B harassment isopleth from 1.166 meters (m) to 2,512 m, and the impact pile driving Level B harassment isopleth from 858 m to 1000 m), the Navy has requested 242 Level B harassment takes of bottlenose dolphins in the Southern Migratory Coastal. The Navy has also proposed 6 Level B harassment takes from impact pile driving during selective pile driving activities associated with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida.

The change in source levels results in a larger area (300 Level B harassment takes from vibratory pile driving and 40 Level B harassment takes from impact pile driving) that was found to meet the negligible impact and small numbers standards and authorized under the 2017 IHA. The proposed IHA includes identical required mitigation, monitoring, and reporting requirements, and takes are below the threshold of 264 Level B harassment takes from vibratory pile driving and 40 Level B harassment takes from impact pile driving that were found to meet the negligible impact and small numbers standards and authorized under the 2017 IHA. The proposed IHA includes identical required mitigation, monitoring, and reporting requirements as the 2017 IHA, and there is no new information suggesting that our analysis or findings should change.

Proposed Authorization

As a result of these preliminary determinations, we are proposing to issue an IHA to the Navy to conduct the specified activities in Naval Station Mayport, FL from May 14, 2018, through May 13, 2019, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from May 14, 2018, through May 13, 2019.

2. This IHA is valid only for pile driving activities associated with the Bravo Wharf Recapitalization Project at Naval Station Mayport, Florida.

3. General Conditions

(a) A copy of this IHA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking is the bottlenose dolphin (Tursiops truncatus) from any of the four following stocks: Jacksonville Estuarine System; Western North Atlantic, offshore; and Western North Atlantic, southern migratory coastal.

(c) The taking is limited to 264 Level B harassment takes from any of the aforementioned stocks of bottlenose dolphins.

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition (3)(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. However, no incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.
(e) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures:

(a) For all pile driving, the Navy shall implement a minimum shutdown zone of 15 m radius around the pile. For impact driving of steel piles, the minimum shutdown zone shall be a 40 m radius. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(b) The Navy shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (available at https://www.fisheries.noaa.gov/node/23111)

i. For all pile driving activities, a minimum of two observers shall be deployed, with one positioned to achieve optimal monitoring of the shutdown zone and the second positioned to achieve optimal monitoring of surrounding waters of the turning basin, the entrance to that basin, and portions of the Atlantic Ocean. If practicable, the second observer should be deployed to an elevated position, preferably opposite Bravo Wharf and with clear sight lines to the wharf and out the entrance channel.

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations within the turning basin shall be distinguished from those in the entrance channel and nearshore waters of the Atlantic Ocean.

iii. All observers shall be equipped for communication of marine mammal observations amongst each other and to other relevant personnel (e.g., those necessary to effect activity delay or shutdown).

(c) Monitoring shall take place from fifteen minutes prior to initiation of pile driving activity through thirty minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (i.e., the entire shutdown zone and surrounding waters must be visible to the naked eye).

(d) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal.

(e) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable throughout communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

(f) The Navy shall use soft start techniques recommended by NMFS for impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day’s impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(g) Pile driving shall only be conducted during daylight hours.

(h) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activity and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Navy shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for projects at Naval Station Mayport, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see https://www.fisheries.noaa.gov/node/23111), and shall also include:

i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any.

ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals.

iii. Estimated total take extrapolated from the number of marine mammals observed during the course of construction activities, if necessary.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Navy shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding
Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;
B. Description of the incident;
C. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
D. Description of all marine mammal observations in the 24 hours preceding the incident;
E. Species identification or description of the animal(s) involved;
F. Fate of the animal(s); and
G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Navy to determine what measures are necessary to minimize the likelihood of further prohibited takes and ensure MMPA compliance. Navy may not resume their activities until notified by NMFS.

2. If NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

3. This Authorization may be modified, suspended or withdrawn if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

4. NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

5. The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.

6. In the event that Navy discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), Navy shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS.

7. The Navy can continue its operations under such a sighting to NMFS. The Navy can continue its operations under such a sighting to NMFS. The Navy can continue its operations under such a sighting to NMFS.

G. Photographs or video footage or other related to the activities authorized in the

H. The Navy shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Navy shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. The Navy can continue its operations under such a case.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for Navy’s Bravo wharf construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on Navy’s request for an MMPA authorization.

Dated: March 29, 2018.
Elaine T. Saiz,
Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–06772 Filed 4–3–18; 8:45 am]

BILING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION
[CPSC Docket No. 18–C0001]

Polaris Industries Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of the Consumer Product Safety Commission’s regulations. Published below is a provisionally-accepted Settlement Agreement with Polaris Industries Inc. containing a civil penalty of $27,250,000, to be paid within thirty (30) days of service of the Commission’s final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 19, 2018.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 18–C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Daniel R. Vice, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–6996.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Alberta E. Mills,
Secretary.

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of: POLARIS INDUSTRIES INC.

CPSC Docket No.: 18–C0001

SETTLEMENT AGREEMENT


THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Polaris is a corporation, organized and existing under the laws of the state of Minnesota, with its principal place of business in Medina, Minnesota.

STAFF CHARGES

4. Between February 2012 and April 2016, Polaris manufactured or imported, distributed and offered for sale in the United States approximately 133,000 Model Year 2013–2016 RZR 900 and Model Year 2014–2016 RZR 1000 recreational off-road vehicles (“RZRs”).

5. Between April 2013 and April 2017, Polaris manufactured or imported, distributed and offered for sale approximately 93,500 Model Year 2014–2015 Ranger XP 900, XP 900 EPS and CREW 900 off-road vehicles (“Rangers”).

6. The RZRs and Rangers (collectively, the “Vehicles”) are “consumer products” that were “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Polaris is a “manufacturer” of the Vehicles and imported the Vehicles, as such terms are defined in sections 3(a)(9) and (11) of the CPSA, 15 U.S.C. § 2052(a)(9) and (11).

Violation of CPSA Section 19(a)(4)


7. The RZRs contained one or more defects which could create a substantial product hazard and create an unreasonable risk of serious injury or death because the RZRs could catch fire while consumers were driving, posing fire and burn hazards to drivers and passengers.