IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–03207 Filed 2–15–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Offsets in Military Exports

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 16, 2024.

ADDRESSES: Interested persons are invited to submit comments by email to Mark Crace, IC Liaison, Bureau of Industry and Security, at *mark.crace@bis.doc.gov* or to *PRAcomments@doc.gov*). Please reference OMB Control Number 0694–0084 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Mark Crace, IC Liaison, Bureau of Industry and Security, phone 202–482–8093 or by email at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Defense Production Act (DPA). The DPA requires U.S. firms to furnish information to the Department of Commerce regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries or foreign firms. Offsets are industrial or commercial compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. Such offsets are required by most major trading partners when purchasing U.S. military equipment or defense related items.

II. Method of Collection

Electronic or on paper.

III. Data

OMB Control Number: 0694–0084.

Form Number(s): 0694–0084.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Time per Response: 12 hours.

Estimated Total Annual Burden Hours: 360.

Estimated Total Annual Cost to Public: 9,000.

Respondent's Obligation: Mandatory.

Legal Authority: Defense Production Act of 1950, Section 309.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–03303 Filed 2–15–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD539]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Lutak Dock Replacement Project, Haines, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as

amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Haines Borough to incidentally harass marine mammals during construction activities associated with a Lutak Dock Replacement project in Haines, Alaska.

DATES: This authorization is effective from June 1, 2024, through May 31, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) 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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA 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) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On July 10, 2023, NMFS received a request from Haines Borough for an IHA to take marine mammals incidental to pile driving involving impact, vibratory, and down-the-hole (DTH) drilling to replace the Lutak Dock. Following NMFS' review of the application, Haines Borough submitted a revised version on October 11, 2023. The application was deemed adequate and complete on October 16, 2023.

Haines Borough's request was for take of six species of marine mammals by Level B harassment and, for a subset of three of these species, Level A harassment. Neither Haines Borough nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

Haines Borough will encapsulate the existing Lutak Dock structure with a new dock structure of similar design. In-water construction activities associated with the project will include impact pile driving, vibratory pile driving and removal, and DTH installation. Pile removal will consist of 24 16-inch (in) steel pipe piles (41 centimeters (cm)) that make up the 4 mooring dolphins and 1 24-in (61-cm) steel guide pile. A template frame will then be welded to 42 36-in (91-cm) temporary piles that are capable of holding 10 permanent piles in each section. The template frame will be used to position the 180 42-in (107-cm) permanent piles across the length of the dock. Up to 10 permanent piles will be set at a time, before moving the template to the next position to install the next 10 permanent piles. A permanent 55.5-in (140-cm) sheet pile wall will be installed and attached to the permanent piles to make up the new dock return walls. It is expected to take up to 234 non-consecutive days to complete the pile driving and removal activities.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 78310, November 15, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Haines Borough was published in the **Federal Register** on November 15, 2023 (88 FR 78310). That notice described, in detail, Haines Borough's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS did not receive any public comments.

Changes From the Proposed IHA to Final IHA

In table 7 of the proposed IHA **Federal Register** notice (88 FR 78310, November 15, 2023) Level A and Level B harassment zones for impact installation of 42-in. piles were incorrect. These values have been corrected in table 6 of this notice. Take estimates and mitigation measures were considered using the correct source level and harassment zones and thus remain unchanged in this notice.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from

anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska SARs (Young *et al.,* 2023). All values presented in table 1 are the most recent available at the time of publication and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Hawai'i	-,-, N	11,278 (0.56, 7,265, 2020)	127	27.09
		Mexico-North Pacific	T, D, Y	N/A (N/A, N/A, 2006)	UND	0.57
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
		Eastern Northern Pacific Northern Resident.	-, -, N	302 (N/A, 302, 2018)	2.2	0.2
		West Coast Transient	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern Southeast Alaska Inland Waters.	-, -, N	1,619 (0.26, 1,250, 2019)	13	5.6
Dall's Porpoise	*Phocoenoides dalli*	Alaska	-, -, N	UND (UND, UND, 2015)	UND	37
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern DPS [5]	-, -, N	43,201 (N/A, 43,201, 2017)	2,592	112
		Western DPS	E, D, Y	52,932 (N/A, 52,932, 2019)	318	254
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Lynn Canal/Stephens Passage.	-, -, N	13,388 (N/A, 11,867, 2016)	214	50

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] Distinct Population Segment (DPS).

A detailed description of the species likely to be affected by the Lutak Dock Replacement project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 78310, November 15, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower

bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Haines Borough's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (88 FR 78310, November 15, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Haines Borough's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (88 FR 78310, November 15, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the final IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes would primarily be by Level B harassment, as use of the construction equipment (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency cetaceans and phocids, because predicted auditory injury zones are larger and beyond Haines Borough's capability to reasonably monitor. Auditory injury is unlikely to occur for other species groups, based on the combination of expected occurrence and monitoring capabilities relative to estimated Level A harassment zone sizes. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, Southall *et al.,* 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1

micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Haines Borough's activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120- and 160-dB re 1 μPa are applicable. DTH systems have both continuous and intermittent (impulsive) components as discussed in the proposed IHA **Federal Register** notice (88 FR 78310, November 15, 2023) in the Description of Sound Sources section. When evaluating Level B harassment, NMFS recommends treating DTH as a continuous source and applying the RMS SPL thresholds of 120-dB re 1 μPa.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0 of Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Haines Borough's construction includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources. As described above, DTH includes both impulsive and non-impulsive characteristics. When evaluating Level A harassment, NMFS recommends treating DTH as an impulsive source.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal, DTH). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 20.86 kilometers^2 (12.96 miles^2), and will consist of the entire area of Lutak Inlet (see Figure 20 in the Haines Borough's application). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$$TL = B \times \mathrm{Log}_{10}\,(R_1/R_2)$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source (20xlog[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting

in a reduction of 3 dB in sound level for each doubling of distance from the source (10xlog[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that will lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, the applicant and NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory, impact, and DTH pile installation of steel pipe and sheet piles and vibratory removal of steel pipe piles. Source levels for impact installation of 36-in steel piles are used as a proxy for 42-in steel piles, as 36-in source levels are higher than those available for 42-in piles. Using these higher values is the more conservative approach for mitigation measures and take estimate calculations. NMFS consulted multiple sources to determine valid proxy source levels for the impact installation of sheet piles, as indicated in table 4. This is the best available data for sheet pile source levels and is based on 24-in sheet piles used for a project in California. Source levels for each pile size and driving method are presented in table 4.

TABLE 4—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile size	Method	Proxy source level			Literature source
		dB RMS re 1μPa	dB SEL * re 1μPa²sec	dB peak re 1μPa	
16-in	Vibratory	161	N/A	N/A	Navy 2015.
24-in	Vibratory	161	N/A	N/A	Navy 2015.
36-in	Vibratory	166	N/A	N/A	Navy 2015.
42-in	Vibratory	170	N/A	N/A	Illingworth and Rodkin, 2019.
55.5-in sheet pile	Vibratory	162	N/A	N/A	Molnar *et al.* 2020.
36-in	Impact	192	184	211	Navy 2015.
42-in	Impact	192	184	211	Navy 2015.
55.5-in sheet pile	Impact	190	180	205	Caltrans 2015.
42-in	DTH	174	164	194	NMFS 2022.

* Sound exposure level (SEL)

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile driving and removal and DTH, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it will be expected to incur PTS. Inputs used in the optional User Spreadsheet tool (table 5), and the resulting estimated isopleths and the calculated Level B harassment isopleth (table 6), are reported below. For source levels of each pile please refer to table 4.

TABLE 5—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of strikes per pile	Number of piles per day	Activity duration (minutes)
16-in vibratory removal	A.1 Vibratory pile driving	2.5	N/A	4	45
24-in vibratory removal	A.1 Vibratory pile driving	2.5	N/A	1	45
36-in vibratory installation (temporary)	A.1 Vibratory pile driving	2.5	N/A	4	15
36-in vibratory removal (temporary)	A.1 Vibratory pile driving	2.5	N/A	4	15
42-in vibratory installation	A.1 Vibratory pile driving	2.5	N/A	4	45
55-in sheet pile vibratory installation	A.1 Vibratory pile driving	2.5	N/A	6	30
36-in impact installation (temporary)	E.1 Impact pile driving	2	900	4	N/A
42-in impact installation	E.1 Impact pile driving	2	1,500	4	N/A
55-in sheet pile impact installation	E.1 Impact pile driving	2	900	6	N/A
42-in DTH installation	E.2 DTH systems	2	324,000	2	N/A

TABLE 6—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)					Level B harassment zone (m)
	LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	Otariids	
16-in vibratory removal	14.2	1.3	21.8	8.6	0.6	5,412

TABLE 6—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS—Continued

Activity	Level A harassment zone (m)					Level B harassment zone (m)
	LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	Otariids	
24-in vibratory removal	5.6	0.5	8.3	3.4	0.2	
36-in vibratory installation (temporary)	14.7	1.3	21.8	8.9	0.6	11,659
36-in vibratory removal (temporary)	14.7	1.3	21.8	8.9	0.6	
42-in vibratory installation*	56.6	5.0	83.6	34.4	2.4	21,544
55-in sheet pile vibratory installation	16.6	1.5	24.5	10.1	0.7	6,310
36-in impact installation (temporary)	2,734.9	97.3	3,257.7	1,463.6	106.6	1,359
42-in impact installation	3,844.5	136.7	4,579.4	2,057.4	149.8	1,359
55-in sheet pile impact installation	1,939.4	69.0	2,310.1	1,037.9	75.6	1,000
42-in DTH installation	4,046.9	143.9	4,820.5	2,165.7	157.7	39,811

*Harassment zones updated from the proposed IHA.

Marine Mammal Occurrence

In this section NMFS provides information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

When available, peer-reviewed scientific publications were used to estimate marine mammal abundance in the project area. Data from monitoring reports from previous projects in Lutak and Skagway were used. However, scientific surveys and resulting data, such as population estimates, densities, and other quantitative information, are lacking for some marine mammal populations and most areas of southeast Alaska, including Lutak Inlet. Therefore, Haines Borough additionally gathered qualitative information from discussions with knowledgeable local people in the Haines area. Assumptions regarding the size of expected groups of different species, and the frequency of occurrence of those groups, were provided by Haines Borough on the basis of the aforementioned information. NMFS has reviewed the available information and concurs that these choices are reasonable.

Here we describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and is authorized. Since reliable densities are not available, the take numbers are based on the assumed maximum number of animals in a group at a given time and the occurrence of those groups per day multiplied by the duration of each activity. Tables for each species are presented to show the calculation of take during the project. The take calculation for this project is:

Incidental take estimate = number of individuals in a group × groups per day × days of pile-related activity

Humpback Whale

Humpback whale presence in Lutak is irregular year-round. From mid-May through September whales are assumed to occur in groups of two and from October to April in groups of one. It is expected that in early summer (mid-May through July) one group every 2 days may occur and at all other times of the year one group every 10 days will occur in the project area (Solstice AK, 2023; Happywhale, 2023). Therefore, using the equation given above, the total number of Level B harassment takes for humpback whales will be 26. Given that 2 percent of the humpback whales in southeast Alaska are expected to be members of the Mexico stock (Wade *et al.,* 2016), 1 take is assumed to be from the Mexico stock and 25 takes from the Hawaii stock.

The largest Level A harassment zone for humpback whales extends 4,050-m from the noise source (table 6). All construction work will be shut down prior to a humpback whale entering the Level A harassment zone specific to the in-water activity underway at the time. In consideration of the infrequent occurrence of humpback whales in the project area and shutdown requirements, no take by Level A harassment is anticipated or authorized for humpback whales.

Killer Whale

Killer whales occur in the Lutak Inlet year round with higher occurrences in the spring. Group sizes of 15 animals are expected with 1 group every 20 days from mid-March through May and 1 group every 30 days for the remainder of the year (Hart Crowser, Inc. and KPFF Consulting Engineers 2016). There are three stocks of killer whales that may be present in the project area, with the following proportions of overall killer whale occurrence expected: Alaska Residents, 75 percent; West Coast Transients, 13 percent; and Northern Residents, 12 percent (section 6 of the IHA application). The applicant estimated these occurrence proportions by determining the total number of animals in all three stocks and dividing that number by the number of animals in a given stock. Therefore, with 130 expected total takes by Level B harassment, 103 takes are expected to be from the Alaska Resident stock, 19 takes are expected from the West Coast Transient stock, and 16 takes are expected from the Northern Resident stock.

The largest Level A harassment zone for killer whales extends 150-m from the noise source (table 6). Killer whales are generally conspicuous and protected species observers (PSOs) are expected to detect killer whales and implement a shutdown before the animals enter the Level A harassment zone. Therefore, takes by Level A harassment are not anticipated or authorized.

Harbor Porpoise

Harbor porpoise are present year round in the Lynn Canal and are expected to be present in groups of two every 30 days at the project site. Haines Borough requested a total of 29 takes of harbor porpoise for the duration of the project. Of the 29 takes it is expected that 13 of those takes could be by Level A harassment, over 153 days of impact installation of 36-in, 42-in, and 55-in sheet piles and DTH activities. For construction activities that are of short duration and the take estimate was below the expected group size, the expected group size (*e.g.,* two animals) was used as a proxy for take calculations for those activities. The remaining 16 takes are expected to be by Level B harassment.

Harbor porpoises are known to be an inconspicuous species and are challenging for PSOs to sight, making any approach to a specific area potentially difficult to detect. The largest Level A harassment zone results from impact driving of 42-in piles, and extends 4,820.5-m from the source for high frequency cetaceans (table 6). The IHA requires a distance of 200-m as a shutdown zone, given the difficulty of observing harbor porpoise at greater

distances (see Mitigation section). Therefore, some take by Level A harassment is expected.

Dall's Porpoise

Groups of 4 Dall's porpoise are expected to occur once every 30 days during the project (Dahlheim *et al.,* 2009), resulting in an estimate of 31 takes by Level B harassment. Although no Dall's porpoise were observed during recent monitoring of other projects in the area, tour boat operators occasionally observe Dall's porpoise in Taiya Inlet (SolsticeAK, 2023). Therefore, the applicant has requested authorization of take as described above. NMFS concurs with this request and authorizes the take.

The largest Level A harassment zone for Dall's porpoise extends 4,820.5-m from the source during DTH installation of 42-in piles (table 6). Although Haines Borough will implement a significantly smaller shutdown zone (*i.e.,* 200-m), given the low likelihood of occurrence of Dall's porpoises in the area take by Level A harassment is not anticipated and is not authorized.

Steller Sea Lion

Steller sea lions are frequently observed in the project area. Group sizes vary during seasonal fish runs in the area. Groups of 40 animals per day are expected from mid-March through May when animals frequent the project site, including the Taiya point haulout. At other times of the year groups of two animals per day are expected in the project area.

During the impact installation of 36-in and 42-in piles and the DTH installation of 42-in piles, groups of 2 sea lions per day are expected to occur within the respective Level A harassment zones over 146 days associated with these activities. On this basis, NMFS authorizes 292 takes of Steller sea lions by Level A harassment. Given that 1.4 percent of Steller sea lions are members of the ESA listed western DPS in the project area, 4 of the 292 takes by Level A harassment will likely be western DPS individuals. The largest Level A harassment zone for Steller sea lions is 150-m (table 6) but it may be difficult for PSOs to view Steller sea lions at the outer edges of the zone and therefore some take by Level A harassment is expected.

Larger harassment zones associated with Level B harassment will encompass the Taiya point haulout. It is expected that groups of 40 Steller sea lions per day over 75 days of vibratory installation of all pile types, impact installation of 36-in and 42-in piles, and DTH installation of 42-in piles which will equate to 3,000 takes by Level B harassment. At other times of the year when the Taiya point haulout is not used, group size will be two sea lions per day. During this period the applicant will complete work over 151 days for vibratory installation of all pile types, impact installation of 36-in and 42-in piles, and DTH installation of 42-in piles which will equate to 302 takes by Level B harassment.

Harbor Seal

Harbor seals are common in the project area year round. The applicant and NMFS expect groups of 100 animals from March through May when animals are more frequent feeding at the mouth of the Chilkoot River. At other times of the year, groups of five animals are expected in the project area (SolsticeAK 2023).

During impact installation of 36-in, 42-in, and 55-in sheet piles and DTH installation of 42-in piles it is expected that one group of five harbor seals every 10 days will occur. Over 153 days of activity, 79 total takes by Level A harassment may occur. For construction activities that are of short duration and the take estimate was below the expected group size, the expected group size (*e.g.,* five animals) was used as a proxy for take calculations for those activities. The largest Level A harassment zone results from impact driving of 42-in piles extends 2,057 m from the source for phocids (table 6). The IHA requires a 200-m shutdown zone, given the difficulty of observing harbor seals at greater distances (see Mitigation section). Therefore, take by Level A harassment is expected.

Similar to Steller sea lions the larger Level B harassment zones will encompass the mouth of the Chilkoot River where larger aggregations of harbor seals are known to occur. It is expected that groups of harbor seals of 100 every 10 days over 75 days of vibratory installation of all pile types, impact installation of all pile types, and DTH installation of 42-in piles, which will equate to 750 takes by Level B harassment. During other times of the year the applicant expects groups of five animals every 10 days over a 151 day period for vibratory installation of all pile types, impact installation of 36-in and 42-in piles, and DTH installation of 42-in piles. This will result in 827 takes by Level B harassment.

TABLE 7—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance [a]	Level A	Level B	Total take	Take as a percentage
Humpback Whale	Mexico	Unknown	0	1	1	N/A
	Hawaii	11,278	0	25	25	0.2
Killer Whale	Alaska Resident	1,920	0	103	103	5.4
	West Coast Transients	349	0	19	19	5.4
	Eastern North Pacific Northern Residents.	302	0	16	16	5.3
Harbor Porpoise	Northern Southeast Alaska	1,619	13	16	29	1.8
Dall's Porpoise	Alaska	UKN	0	31	31	N/A
Steller sea lion	Western DPS	52,932	4	33	37	<0.1
	Eastern DPS	43,201	288	2,319	2,607	6.0
Harbor Seal	Lynn Canal/Stephens Passage.	13,388	79	827	906	6.8

[a] Stock or DPS size is best estimate of population size (Nbest) according to NMFS 2022 Final Stock Assessment Reports.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological)

of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The following measures will apply to Haines Borough's mitigation requirements:

Implementation of Shutdown Zones—For all pile driving/removal activities, Haines Borough will implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns will be used to avoid or minimize incidental Level A harassment takes from vibratory, impact, and DTH pile removal and installation (table 8). For all pile driving/removal activities, a minimum 10-m shutdown zone must be established. NMFS has recommended shutdown zones of 200-m for high-frequency cetaceans and phocids, despite significantly larger estimated Level A harassment zones, in order to prescribe implementation of a zone that may be reasonably observed under typical conditions for these cryptic species. It is reasonable to expect that these species will be difficult to detect from distances further than 200-m by PSOs (table 8). All other shutdown zones for pile driving and removal activities are based on the Level A harassment zones and therefore vary by pile size and marine mammal hearing group (table 6). The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting section) will ensure the full extent of shutdown zones are visible to PSOs.

TABLE 8—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Pile size	Minutes or strikes per pile	Piles per day	Shutdown zones (m)				
				LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
Vibratory Removal	16-in	45 min	4	15	10	30	10	10
	24-in	45 min	1	10				
	36-in (temporary)	15 min	4	15	10	30	10	10
Vibratory Installation	36-in (temporary)	15 min	4	15	10	30	10	10
	42-in	45 min	4	60	10	85	35	10
	55-in sheet pile	30 min	6	20	10	25	10	10
Impact Installation	36-in (temporary)	900 strikes	4	2,735	110	200	200	110
	42-in	1,500 strikes	4	3,845	150			150
	55-in sheet pile	900 strikes	6	1,940	70			80
DTH drilling	42-in	300 min/324,000 strikes	2	4,050	145			160

Establishment of Monitoring Zones—Haines Borough has identified monitoring zones correlated with the larger of the Level B harassment or Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. In some cases the calculated monitoring zones are smaller than the Level A shutdown zones as presented in table 8. This is due to the project area being bounded by land to 7,000-m on the western most shore of the inlet and 5,820-m on the eastern shore. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. PSOs will monitor the entire visible area to maintain the best sense of where animals are moving relative to the zone boundaries defined in tables 8 and 9. Placement of PSOs on the shorelines around Lutak Inlet allow PSOs to observe marine mammals within and near the inlet. The applicant may also voluntarily place a PSO on a skiff in Taiya Inlet if safe conditions allow for such activity.

TABLE 9—MARINE MAMMAL MONITORING ZONE

Activity	Monitoring zone (m)
Vibratory removal of 16-in and 24-in piles	5,425
Vibratory installation and removal of 36-in temporary piles	7,000
Vibratory installation of 42-in piles	7,000
Vibratory installation of 55-in sheet piles	6,310
Impact installation of 36-in temporary piles	*1,360
Impact installation of 42-in piles	*1,360
Impact installation of 55-in sheet piles	1,000
DTH installation of 42-in piles	7,000

*Where Level A shutdown zones are larger than the Level B harassment zones.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second

waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start will 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 30-minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30-minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30-minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15-minutes. If the monitoring zone has been observed for 30-minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue even if visibility becomes impaired within the monitoring zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, activities may begin. No work may begin unless the entire shutdown zone is visible to the PSOs. If work ceases for more than 30-minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone will commence.

Based on our evaluation of the applicant's measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected 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 IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations 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 while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers in accordance with the monitoring plan (appendix C of the IHA application) and section 5 of the IHA. 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 through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), 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).

Monitoring will be conducted 30-minutes before, during, and 30-minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30-minutes.

A minimum of one PSO will be on duty during all barge movements and other in-water construction activities and a minimum of three PSOs during all pile driving activities. Locations from which PSOs will be able to monitor for marine mammals are readily available from publicly accessible shore side areas at the project site, Lutak Road at a beach across from Takshanuk Mountain trail, and along the shoreline just south of Tanani Point along Lutak Road. PSOs will monitor for marine mammals entering the harassment zones.

PSOs will scan the waters using binoculars and will use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. Haines Borough will adhere to the following observer qualifications:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;

(ii) One PSO will be designated as the lead PSO or monitoring coordinator and that observer must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and

(iv) Haines Borough must submit observer Curriculum Vitaes for approval by NMFS.

Additional recommended observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact driving) and for each pile or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); animal's closest point of approach and estimated time spent within the harassment zone; and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Haines Borough will immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report will include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Haines Borough to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Haines Borough will not be able to resume their activities until notified by NMFS.

In the event that Haines Borough discovers an injured or dead marine mammal, and the lead PSO 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 as described in the next paragraph), Haines Borough will immediately report the incident to the Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with Haines Borough to determine whether modifications in the activities are appropriate.

In the event that Haines Borough discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Haines Borough will report the incident to the Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. Haines Borough will provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as

effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 7, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment will be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated or authorized given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated for harbor porpoise, Steller sea lions, and harbor seal. Take by Level A harassment of the ESA-listed western DPS of Steller sea lions is expected to be a very small portion of the overall DPS (<0.1 percent). Impacts to affected individuals of the western DPS are not expected to result in population-level impacts. The potential for harassment is minimized through the construction method (*i.e.,* use of direct pull removal or vibratory methods to the extent practical) and the implementation of the planned mitigation measures (see Mitigation section).

In addition to the expected effects resulting from Level B harassment, we anticipate that harbor porpoises, Steller sea lions, and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS will likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal will lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals will be likely to move away from a sound source that represents an aversive stimulus, especially at levels that will be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities, the relatively small area of the habitat that may be affected, and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. The haulout location at Taiya Point will be affected by the project for foraging Steller sea lions and occasionally harbor seals. Currently, the Taiya Point haulout location is not known to be a pupping location for Steller sea lions or harbor seals but are important areas throughout the year. Steller sea lions and to a lesser extent harbor seals at this haulout will likely result in repeated exposure of the same animals. Repeated exposures of individuals to this pile driving activity could cause Level A and Level B harassment but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals.

In summary and as described above, the following factors support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment exposures (*i.e.,* to harbor seals, harbor porpoise, and Steller sea lions, only) are anticipated to result in slight PTS (*i.e.,* of a few decibels), within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that will not result in fitness impacts to individuals;
- The ensonifed areas from the project are very small relative to the overall habitat ranges of all species and stocks;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat or any other areas of known biological importance; with the exception of the haulout location at Taiya Point; and
- The mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 7 demonstrates the number of animals that could be exposed to the received noise levels that could cause harassment for the work in Lutak Inlet. Our analysis shows that less than 6.8 percent of each affected stock could be taken by harassment. The numbers of animals to be taken for these stocks will be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

In the Haines area sea lions and harbor seals are available for subsistence harvest under the MMPA. Limited subsistence harvests of marine mammals near the community of Haines has occurred in the past, with the most recent recorded/documented harvests of marine mammals in Haines in 2012 and in nearby Klukwan in 2014. The activity will take place in Lutak Inlet, and no activities overlap with current subsistence hunting areas; therefore, there are no relevant subsistence uses of marine mammals adversely impacted by this action. The project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Haines Borough's activities.

Endangered Species Act

There are two marine mammal species (Mexico DPS humpback whale and western DPS Steller sea lion) that NMFS is authorizing take in the project area that are listed as threatened and endangered under the ESA. The NMFS Alaska Regional Office issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to Haines Borough under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of western DPS Steller sea lions, and is not likely to destroy or adversely modify Mexico DPS humpback whale and western DPS Steller sea lion critical habitats.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the issuance of an IHA) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Haines Borough for the potential harassment of small numbers of six marine mammal species incidental to the Lutak Dock replacement project in Haines, AK, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: February 12, 2024.

Kimberly Damon-Randall,

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

[FR Doc. 2024–03251 Filed 2–15–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD731]

Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC); Joint Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The MAFMC and NEFMC will jointly hold a public meeting (webinar) of the Spiny Dogfish and Monkfish Advisory Panels to review potential sturgeon bycatch reduction measures. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Tuesday, March 5, 2024, from 1 p.m. to 5 p.m.

ADDRESSES: Webinar connection information will be posted to the MAFMC's website calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Councils' Monkfish and Spiny Dogfish Advisory Panels will meet jointly to discuss: The range of sturgeon bycatch reduction alternatives; the draft impact analyses for the alternatives; recommendations for the Councils and their Spiny Dogfish and Monkfish Committees; and other business, as necessary.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*