

DRAFT INCIDENTAL HARASSMENT AUTHORIZATION

The U.S. Navy (Navy) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) to take marine mammals incidental to conducting in-water construction work for the Portsmouth Naval Shipyard Dry Dock 1 modification and expansion in Kittery, Maine, contingent upon the following conditions:

1. This Authorization is valid from the date of issuance through February 27, 2022.
2. This IHA authorizes take incidental to in-water construction work, as specified in the Navy's IHA application, associated with modification and expansion of Portsmouth Naval Shipyard Dry Dock 1 in Kittery, Maine.
3. General Conditions.
 - (a) A copy of this Authorization 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 are the harbor seal (*Phoca vitulina*) and gray seal (*Halichoerus grypus*). The taking, by Level A and Level B harassment only, is limited to the numbers listed in Table 1.
 - (c) The taking by serious injury or death of the species listed in condition 3(b) or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization. Any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of this IHA.
 - (d) The Navy shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, acoustical monitoring team, and Navy staff prior to the start of all in-water construction activities, 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) Activities authorized for take of marine mammals by this Authorization (impact and vibratory pile driving) must only occur during daylight hours.
- (b) For in-water construction, heavy machinery activities other than pile driving (e.g., use of barge-mounted excavators, or dredging), if a marine mammal comes within 10 m, the Navy must cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions
- (c) The Navy is required to employ PSOs per the Marine Mammal Monitoring Plan, dated March 2019, and Monitoring Measures described in section 5 of this IHA.
- (d) Marine mammal monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 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 (Table 2), there behavior must be monitored and documented until they leave the shutdown zone on their own volition.
- (e) If a marine mammal is entering or is observed within an established shutdown zone (Table 2), pile driving must be halted or delayed. Pile driving may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without subsequent detections.
- (f) The Navy must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must 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) 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 or within the monitoring zone (Table 3), pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in condition 4(e) above, has elapsed.

5. Monitoring Measures

The holder of this IHA is required to abide by the following marine mammal and acoustic monitoring measures:

- (a) Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, dated March 2019.
- (b) Marine mammal monitoring during pile driving must be conducted by NMFS-approved PSOs in a manner consistent with the following:
 - i. Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used.
 - ii. At least one observer must have prior experience working as an observer;
 - iii. Other PSOs may substitute education (degree in biological science or related field) or training for experience.
 - iv. Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction.
 - v. The Navy must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

6. Reporting

The holder of this IHA is required to:

- (a) Submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the completion of the project or sixty days prior to the issuance of any subsequent IHA for this project, 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 Marine Mammal Monitoring Plan, dated March 2019, including, but not limited to:
 - i. Dates and times (begin and end) of all marine mammal monitoring.
 - ii. Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, impact or vibratory).
 - iii. Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state).
 - iv. The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.

- v. Age and sex class, if possible, of all marine mammals observed.
 - vi. PSO locations during marine mammal monitoring.
 - vii. Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).
 - viii. Description of any marine mammal behavior patterns during observation, including direction of travel.
 - ix. Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate).
 - x. Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.
 - xi. Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.
- (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 serious injury, or mortality, the Navy must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301-427-8401) and NMFS Greater Atlantic Region Stranding Coordinator (866-755-6622). 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 and active sound source use 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 must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the Navy to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy may not resume their activities until notified by NMFS.’

- ii. In the event the 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), the Navy must immediately report the incident to the NMFS Office of Protected Resources and the NMFS Greater Atlantic Coast Region Stranding Coordinator. 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 the Navy to determine whether additional mitigation measures or modifications to the activities are appropriate.
 - iii. In the event that the Navy discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Navy must report the incident to the NMFS Office of Protected Resources and the NMFS Greater Atlantic Coast Region Stranding Coordinator within 24 hours of the discovery.
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.

Donna S. Wieting,
Director, Office of Protected Resources
National Marine Fisheries Service

Date

Table 1. Species/stocks and numbers of marine mammals authorized to be taken under this IHA.

Species	Level A	Level B
Harbor seal	2	29
Gray seal	0	3

Table 2. Shutdown distances for various pile driving activities

Pile type, size & driving method	Shutdown distance (m)
Vibratory drive 25" sheet pile (10 pile/day)	10
Vibratory drive 27" sheet pile (10 pile/day)	10
Vibratory drive 30" steep pipe pile (1 pile/day)	10
Vibratory drive 30" steep pipe pile (2 pile/day)	10
Impact drive 27" sheet pile (10 pile/day)	50

Table 3. Marine mammal Level A harassment and Level B harassment zones for monitoring

Pile type, size & driving method	Level A harassment	Level B harassment
	Dist. (m)	Dist. (m)
Vibratory drive 25" sheet pile (10 pile/day)	9.2	13,594
Vibratory drive 27" sheet pile (10 pile/day)	10.4	13,594
Vibratory drive 30" steep pipe pile (1 pile/day)	2.0	13,594
Vibratory drive 30" steep pipe pile (2 pile/day)	3.2	13,594
Impact drive 27" sheet pile (10 pile/day)	923.5	2,512