

INCIDENTAL HARASSMENT AUTHORIZATION

The National Oceanic and Atmospheric Administration (NOAA) and their designees are hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to incidentally harass marine mammals, under the following conditions:

1. This incidental harassment authorization (IHA) is valid 1 February 2022 through 31 January 2023.
2. This IHA authorizes take incidental to the NOAA Port Facility Project in Ketchikan, Alaska, as specified in NOAA's November 2021 IHA application. Hereafter (unless otherwise specified) the term "pile driving" is used to refer to both pile installation and pile removal by impact, vibratory, or down-the-hole (DTH) methods.
3. General Conditions
 - (a) A copy of this IHA must be in the possession of the Holder of the Authorization (Holder), supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this IHA at all times that activities subject to this IHA are being conducted.
 - (b) The species and/or stocks authorized for taking are listed in Table 1. Authorized take, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 1.
 - (c) The taking by serious injury or death of any of the species listed in Table 1 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. 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 Holder must ensure that construction supervisors and crews, the monitoring team, and relevant NOAA staff are trained prior to the start of activities subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

- (e) The Holder also must abide by the terms and conditions (attached) of the [DATE] Biological Opinion issued by NMFS pursuant to section 7 of the Endangered Species Act.

4. Mitigation Requirements

- (a) The Holder must employ PSOs and establish monitoring locations as described in section 5 of this IHA and the Marine Mammal Monitoring Plan (Monitoring Plan; attached). The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.
- (b) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (i.e., pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity.
- (c) If a marine mammal is observed entering or within the shutdown zones indicated in Table 2, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in condition 4(e) of this IHA.
- (d) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 2 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.
- (e) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 2 or 15 minutes have passed without re-detection of the animal.
- (f) The Holder 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 30-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 30 minutes or longer.
- (g) Pile driving activity must be halted (as described in condition 4(c) of this IHA) upon observation of either a species for which incidental take is not authorized or

a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone (as shown in Table 2). If a listed marine mammal is determined by the PSO to have been disturbed, harassed, harmed, injured, or killed (e.g., a listed marine mammal is observed entering a shutdown zone before operations can be shut down, or is injured or killed as a direct or indirect result of this action), the PSO will report the incident to NMFS within one business day, with information submitted to akr.section7@noaa.gov.

- (h) The Holder, construction supervisors and crews, PSOs, and relevant NOAA staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- (i) For humpback whales, if the boundaries of the harassment zone have not been monitored continuously during a work stoppage, the entire harassment zone will be surveyed again to ensure that no humpback whales have entered the harassment zone that were not previously accounted for.
- (j) In-water activities will take place only: between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort Sea State of 4 or less; when the entire shutdown zone and adjacent waters are visible (e.g., monitoring effectiveness is not reduced due to rain, fog, snow, etc.). Pile driving activities may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization for the evening. PSO(s) will continue to observe shutdown and monitoring zones during this time. The length of the post- activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.
- (k) Vessel operators will: maintain a watch for marine mammals at all times while underway; stay at least 91 m (100 yd) away from listed marine mammals, except they will remain at least 460 m (500 yd) from endangered North Pacific right whales; travel at less than 5 knots (9 km/hr) when within 274 m (300 yd) of a whale; avoid changes in direction and speed when within 274 m (300 yd) of whales, unless doing so is necessary for maritime safety; not position vessel(s) in the path of whales, and will not cut in front of whales in a way or at a distance that causes the whales to change their direction of travel or behavior (including

breathing/surfacing pattern); check the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged; reduce vessel speed to 10 knots or less when weather conditions reduce visibility to 1.6 km (1 mi) or less; adhere to the Alaska Humpback Whale Approach Regulations when transiting to and from the project site (see 50 CFR §§ 216.18, 223.214, and 224.103(b)); not allow lines to remain in the water, and no trash or other debris will be thrown overboard, thereby reducing the potential for marine mammal entanglement; follow established transit routes and will travel <10 knots while in the harassment zones; the speed limit within Tongass Narrows is 7 knots for vessels over 23 feet in length. If a whale's course and speed are such that it will likely cross in front of a vessel that is underway, or approach within 91 m (100 yd) of the vessel, and if maritime conditions safely allow, the engine will be put in neutral and the whale will be allowed to pass beyond the vessel, except that vessels will remain 460 m (500 yd) from North Pacific right whales.

5. Monitoring Requirements

- (a) Marine mammal monitoring must be conducted in accordance with the conditions in this section and the Monitoring Plan (attached) and this IHA.
- (b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:
 - (i) PSOs must be independent (i.e., not construction personnel) and have no other assigned tasks during monitoring periods.
 - (ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
 - (iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
 - (iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

- (v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.
- (c) The Holder must establish monitoring locations as described in the Monitoring Plan (attached). For all pile driving and DTH activities, a minimum of one PSO must be assigned to each active pile driving/DTH location to monitor the shutdown zones. For all pile driving and DTH activities, 2 additional PSOs are required. The additional PSOs will start at the project site and travel along Tongass Narrows, counting all humpback whales present, until they have reached the edge of the respective harassment zone. At this point, the PSOs will identify suitable observation points from which to observe the width of Tongass Narrows for the duration of pile driving activities. For the largest DTH zones these are expected to be on South Tongass Highway near Mountain Point and North Tongass Highway just northwest of the intersection with Carlanna Creek. If visibility deteriorates so that the entire width of Tongass Narrows at the harassment zone boundary is not visible, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or within the harassment zone are detected by PSOs.
- (d) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in section 6 of this IHA.
- (e) If visibility degrades to where the PSO(s) cannot view the entire impact or vibratory harassment zones, humpback whale take will be extrapolated based on the estimated percentage of the monitoring zone that remains visible and the number of marine mammals observed.

6. Reporting

- (a) The Holder must submit its draft report(s) on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.
- (b) All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *Dwayne.Meadows@noaa.gov*.

- (c) The marine mammal report must contain the informational elements described in the Monitoring Plan and, at minimum, must include:
- (i) Dates and times (begin and end) of all marine mammal monitoring;
 - (ii) Construction activities occurring during each daily observation period, including:
 - A. The number and type of piles that were driven and the method (e.g., impact, vibratory, down-the-hole);
 - B. Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving); and
 - C. For down-the-hole drilling, duration of operation for both impulsive and non-pulse components.
 - (iii) PSO locations during marine mammal monitoring;
 - (iv) 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;
 - (v) Upon observation of a marine mammal, the following information:
 - A. Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
 - B. Time of sighting;
 - C. 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;
 - D. Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
 - E. Estimated number of animals (min/max/best estimate);

- F. Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
 - G. Animal's closest point of approach and estimated time spent within the harassment zone;
 - H. 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);
- (vi) Number of marine mammals detected within the harassment zones, by species; and
 - (vii) Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.
- (d) The Holder must submit all PSO datasheets and/or raw sighting data with the draft report, as specified in condition 6(b) of this IHA. PSO data will be submitted electronically in a format that can be queried such as a spreadsheet or database (i.e. digital images of data sheets are not sufficient).
- (e) Reporting injured or dead marine mammals:
- In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *Dwayne.Meadows@noaa.gov*) and to the Alaska regional stranding network (877-925-7773) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS.

The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- (ii) Species identification (if known) or description of the animal(s) involved;
- (iii) Condition of the animal(s) (including carcass condition if the animal is dead);
- (iv) Observed behaviors of the animal(s), if alive;
- (v) If available, photographs or video footage of the animal(s); and
- (vi) General circumstances under which the animal was discovered.

7. This Authorization may be modified, suspended or revoked if the Holder fails to abide by the conditions prescribed herein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines: (1) the authorized taking is likely to have or is having more than a negligible impact on the species or stocks of affected marine mammals, 2) the authorized taking is likely to have or is having an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses, or (3) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat.

8. Renewals

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities (or a subset of those activities) are planned or (2) the specified activities will not be completed by the time the IHA expires and a Renewal would allow for completion of the activities, provided all of the following conditions are met:

- (a) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (note a Renewal IHA expiration date cannot extend beyond one year from expiration of this IHA).
- (b) The request for renewal must include the following:
 - (i) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed for this IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile

size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- (ii) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
- (c) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings made in support of this IHA remain valid.

Kimberly Damon-Randall,
Director, Office of Protected Resources
National Marine Fisheries Service

Table 1. Authorized Incidental Take.

Common name	Stock	Level A harassment	Level B harassment
Humpback whale	Central North Pacific	40	0
Minke whale	Alaska	1	0
Gray whale	Eastern North Pacific	4	0
Killer whale	Northern Resident Northern Resident West Coast Transient	20	0
Pacific White-sided dolphin	North Pacific	200	0
Dall's porpoise	Alaska	40	20
Harbor porpoise	Southeast Alaska	20	10
Harbor seal	Clarence Strait	423	141
Steller sea lion	Eastern DPS	470	0

Table 2. Shutdown and Harassment Zones (meters).

Method	Pile Type	Minimum shutdown zone	Harassment zone
		All Species	
DTH	24-inch steel	180	11,660
Impact	24-inch steel	180	2,530
Vibratory	14-inch Timber	10	2,930
Small Pile Clipper	14-inch Steel	10	1850
Large Pile Clipper	20- or 24-inch Steel	10	5420