**TEMPLATE For Request for Initiation of Informal Consultation**

2/10/17

<**bold text**> indicates info needed from you.

*Italic text provides guidance that will eventually be deleted from your letter*

Links take you to example language and helpful websites

<**insert date**>

Jon Kurland

Assistant Regional Administrator for Protected Resources

NMFS, Alaska Region

PO Box 21668

Juneau, AK 99802

Re: Request for Initiation of Informal Consultation under section 7(a)(2) of the Endangered Species Act (ESA) for <**insert permit number or project name>**

Dear Mr. Kurland:

The <**insert Federal action agency (acronym)>** proposes to <**carry out/authorize/fund**> the proposed project as described below. We request initiation of informal consultation under section 7(a)(2) of the Endangered Species Act for the <**insert name of the project>**. We have determined that the proposed activity may affect, but is not likely to adversely affect **<identify ESA-listed species/critical habitat>**. Our supporting analysis is provided below. We request your written concurrence if you agree with our determinations.

*For more information on NMFS ESA-listed species and critical habitat in Alaska see:*

<https://alaskafisheries.noaa.gov/pr/species>

<https://alaskafisheries.noaa.gov/pr/esa-species-list>

<https://alaskafisheries.noaa.gov/mapping/esa/>

# Project Description

This proposed project is intended to <**briefly explain the purpose of the project>**. We expect work to commence on **<insert anticipated starting date for work>**, and extend through **<anticipated completion date with a buffer if practicable to prevent the need for reinitiation of consultation due to weather delays or equipment difficulties>.**

*Describe all activities to be carried out*

* *If pile driving, include the following information:* 
  + *Number, diameter and type of piles*
  + *Installation/removal method*
  + *Type of equipment proposed (model, max energy, frequency, hammer force, etc.)*
  + *Type of substrate and bathymetry (and any other site specific characteristics available)*
  + *Estimate of noise at the source and distance to relevant thresholds for species in the action area[see:* [*Guidance for Sound Propagation Modeling*](http://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/killer_whales/esa_status/characterize_sound_propagation_modeling_guidance_memo.pdf)*], generally the thresholds for level B disturbance (non-injurious harassment) are the distance from the source to the 160 dB isopleth for impulsive noise and to the 120 dB isopleth for non-impulsive noise.*
* *If silt curtains or cofferdams will be used, describe:*
  + *How will be installed*
  + *Size of area within the curtain or cofferdam*
  + *How long the structure will be present.*
* *If dredging, include the following information:*
  + *Dredge type*
  + *Volume of material to be removed*
  + *Authorized dimensions of channel and/or depths to be restored*
  + *Disposal location and estimate of number of trips*
  + *If maintenance is included, indicate the frequency of recurring dredging and location of disposal*
  + *Time of year proposed (dredging start and stop dates)*
  + *Duration of work (total hours or days of dredging)*
* *If there will be project vessels*:
  + *Sound source level for that vessel (or similar engine type) at anticipated operational speeds*
  + *Approximate size and type of vessel (i.e., deep draft, cargo, barge etc.)*
  + *Available information on speed*
  + *Travel routes*
  + *Number of trips*
  + *Time window of operations*
  + *Amount of time each vessel will be underway*
* *If in-water or over-water structures:*
  + *Describe the size of the structure and how it will be constructed/installed*
* *If aquaculture:*
  + *Describe layout of gear (include figures wherever possible)*
  + *Size of area impacted/leased and portion of area where gear will be deployed*
  + *Complete description of gear including vertical and ground lines, anchoring methods*
  + *Species being grown/raised*
  + *How gear will be marked and maintained*
  + *Spat source*
* *If rip-rap or other material being placed* *on shoreline or bottom,*
  + *type of material and how it will be placed (e.g., small rocks by hand)*
  + *material source location*
  + *whether material will be placed below and/or above the waterline*
  + *volume of material to be placed*
  + *characteristics of substrate that will be covered*
  + *linear measure of shoreline to be armored*
  + *local bathymetry adjacent to site*

## Mitigation Measures

* *Include any mitigation/minimization measures proposed as part of the action (special permit conditions, restrictions on equipment, time of year, etc.)*

### Standard Mitigation Measures for Small-Scale Pile Driving Projects

*Appropriate for piles of less than 14” diameter and in numbers fewer than 20.*

To minimize the risk of harm to listed marine species from pile driving, the <**insert action agency>** agrees to implement the following mitigation measures:

1. One or more protected species observer (PSOs), able to accurately identify and distinguish species of Alaska marine mammals, will be present before and during all in‐water construction and demolition activities.
2. Prior to in‐water construction activities, an exclusion (i.e., shut-down) zone will be established. For this project, the exclusion zone includes all marine waters within <**insert radius in meters**> of the sound source. *(If the exclusion zone is >2km radius, consider whether a formal consultation or additional noise quieting mitigation and/or monitoring may be in order.*
3. Pile-driving will not be conducted unless all waters within and adjacent to the exclusion zone are clearly visible.
4. The PSO(s) will be positioned such that the entire exclusion zone is visible to them (e.g., situated on a platform, elevated promontory, boat or aircraft).
5. The PSO(s) will have the following to aid in determining the location of observed listed species, to take action if listed species enter the exclusion zone, and to record these events:
   1. Binoculars
   2. Range finder
   3. GPS
   4. Compass
   5. Two‐way radio communication with construction foreman/superintendent
   6. A log book of all activities which will be made available to <**insert action agency>** andNMFS upon request.
6. The PSO(s) will have no other primary duties than watching for and reporting on events related to marine mammals.
7. The PSO(s) will have the 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, and will have the authority to order a shutdown of noise-producing operations in the event that a marine mammal is observed within or is judged likely to enter the exclusion zone.
8. The PSO(s) will work in shifts lasting no longer than 4 hrs with at least a 1-hr break between shifts, and will not perform duties as an PSO for more than 12 hrs in a 24‐hr period (to reduce PSO fatigue).
9. The PSO(s) will scan the exclusion zone for the presence of listed species for 30 min before any pile‐driving or removal activities take place.
   1. If any listed species are present within the exclusion zone, pile‐driving and removal activities will not begin until the animal(s) has left the exclusion zone or no listed species have been observed in the exclusion zone for 15 min (for pinnipeds) or 30 min (for cetaceans).
10. Throughout all pile‐driving activity, the PSO will continuously scan the exclusion zone to ensure that listed species do not enter it.
    * + 1. If any listed species enter, or appear likely to enter, the exclusion zone during pile‐driving or removal activities, all driving or removal activity will cease immediately. Pile-driving or removal activities may resume when the animal(s) has been observed leaving the area on its own accord. If the animal(s) is not observed leaving the area, pile‐driving activity may begin 15 min (for pinnipeds) or 30 min (for cetaceans) after the animal is last observed in the area. Note: If a marine mammal is first observed within the exclusion zone during construction operations, the PSO will notify NMFS immediately after ordering a shut-down of operations.
11. Ramp‐up (soft start) procedures will be applied prior to beginning pile‐driving activities each day and/or when pile‐driving hammers have been idle for more than 30 min:
    1. For impact pile‐driving, contractors will be required to provide an initial set of three strikes from the hammer at 40 percent energy, followed by a 30‐sec waiting period. This procedure shall be repeated two additional times prior to operation of impact pile driving.
12. All in-water work will be completed by <**insert reasonable work window**>.
13. The <**insert action agency**> will require the applicant to provide NMFS, within 60 days of project completion, a report of all sightings of listed species (or confirmation on absence of sightings), estimated distance from project operations, and any shutdown during pile driving or pile removal activities due to listed species approaching or occurring within the exclusion zone. *(example reporting template* [*link here*](https://alaskafisheries.noaa.gov/sites/default/files/pso_mml_sheet.xlsx)*).*

### Standard Mitigation Measures for Large-Scale Pile Driving Projects

*Appropriate for piles 14” diameter or greater, or for 20 or more piles.*

To minimize the risk of harm to listed marine species from pile driving, the <**insert action agency>** agrees to implement the following mitigation measures:

1. One or more protected species observers (PSOs), able to accurately identify and distinguish species of Alaska marine mammals, will be present before and during all in‐water construction and demolition activities.
2. Prior to in‐water construction activities, an exclusion (i.e., shut-down) zone will be established. For this project, the exclusion zone includes all marine waters within <**insert radius in meters**> of the sound source. *(If the exclusion zone is >2km radius, consider whether a formal consultation or additional noise quieting mitigation and/or monitoring may be in order.*
3. Pile-driving will not be conducted unless all waters within and adjacent to the exclusion zone are clearly visible.
4. The PSO(s) will be positioned such that the entire exclusion zone is visible to them (e.g., situated on a platform, elevated promontory, boat or aircraft).
5. The PSO(s) will have the following to aid in determining the location of observed listed species, to take action if listed species enter the exclusion zone, and to record these events:
   1. Binoculars
   2. Range finder
   3. GPS
   4. Compass
   5. Two‐way radio communication with construction foreman/superintendent
   6. A log book of all activities which will be made available to <**insert action agency>** andNMFS upon request
6. The PSO(s) will have no other primary duty than to watch for and report on events related to marine mammals.
7. The PSO(s) will be in direct communication with on-site project lead and will have shutdown authority.
8. The PSO(s) will work in shifts lasting no longer than 4 hrs with at least a 1-hr break between shifts, and will not perform duties as a PSO for more than 12 hrs in a 24‐hr period (to reduce PSO fatigue).
9. The PSO(s) will scan the exclusion zone for the presence of listed species for 30 min before any pile‐driving or removal activities take place.
   1. If any listed species are present within the exclusion zone, pile‐driving and removal activities will not begin until the animal(s) has left the exclusion zone or no listed species have been observed in the exclusion zone for 15 min (for pinnipeds) or 30 min (for cetaceans).
10. Throughout all pile‐driving activity, the PSO(s) will continuously scan the exclusion zone to ensure that listed species do not enter it.
11. If any listed species enter, or appear likely to enter, the exclusion zone during pile‐driving or removal activities, all pile‐driving activity will cease immediately. Pile-driving activities may resume when the animal(s) has been observed leaving the area on its own accord. If the animal(s) is not observed leaving the area, pile‐driving activity may begin 15 min (for pinnipeds) or 30 min (for cetaceans) after the animal is last observed in the area. Note: If a marine mammal is first observed within the exclusion zone during construction operations, the PSO will notify NMFS immediately after ordering a shut-down of operations.
12. Ramp‐up (soft start) procedures will be applied prior to beginning pile‐driving activities each day and/or when pile‐driving hammers have been idle for more than 30 min:
    1. For impact pile‐driving, contractors will be required to provide an initial set of three strikes from the hammer at 40 percent energy, followed by a 30‐sec waiting period. This procedure shall be repeated two additional times prior to operational impact pile driving.
13. All in‐water work will be completed <**insert reasonable work window**>.
14. Monthly PSO reports, a final PSO report, and (*if applicable)* Cook Inlet beluga observation forms will be provided to NMFS.
    1. The reporting period for each monthly PSO report will be the entire calendar month, and reports will be submitted by close of business on the fifth day of the month following the end of the reporting period (e.g., the monthly report covering April 1 to 30, 2017, will be submitted to the NMFS by close of business on May 5, 2017).
    2. *This measure (b) only applies to Cook Inlet Beluga:* The monthly PSO report will use the Cook Inlet beluga observation template (*example template* [*link here*](https://alaskafisheries.noaa.gov/sites/default/files/poa_tpp_mm_sightings.xlsx)) and PSOs will follow the best practices document (provided at the end of this letter) to report sightings of Cook Inlet belugas. Completed forms, in electronic format, will be provided to the NMFS in monthly reports.
    3. PSO report data will also include the following for each listed marine mammal observation or “sighting event” if repeated sightings are made of the same animal(s) (*example reporting template* [*link here*](https://alaskafisheries.noaa.gov/sites/default/files/esa_sec7_combined_reports.xlsx)):
       1. Species, date, and time for each sighting event.
       2. Number of animals per sighting event; and number of adults/juveniles/calves per sighting event.
       3. Primary, and, if observed, secondary behaviors of the marine mammals in each sighting event.
       4. Geographic coordinates for the observed animals, with the position recorded by using the most precise coordinates practicable (coordinates must be recorded in decimal degrees, or similar standard, and defined coordinate system).
       5. Time of the most recent pile‐driving or other project activity prior to marine mammal observation.
       6. Environmental conditions as they existed during each sighting event, including Beaufort sea state, weather conditions, visibility (km/mi), lighting conditions, and percent ice cover.
    4. A final technical report will be submitted to NMFS within 90 days after the final pile has been driven for the project. The report will summarize all activities associated with the proposed action, and results of marine mammal monitoring conducted during the in‐water project activities. The final technical report will include items from the list above as well as the following:
       1. Summaries of monitoring efforts including total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors that affect visibility and detectability of marine mammals.
       2. Analyses on the effects from various factors that may have influenced detectability of marine mammals (e.g., sea state, number of observers, fog, glare, and other factors as determined by the PSOs).
       3. Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.
       4. Effects analyses of the project activities on listed marine mammals.
       5. Number of marine mammals observed (by species) during periods with and without project activities (and other variables that could affect detectability), such as:
          1. Initial marine mammal sighting distances versus project activity at time of sighting.
          2. Observed marine mammal behaviors and movement types versus project activity at time of sighting.
          3. Numbers of marine mammal sightings/individuals seen versus project activity at time of sighting.
          4. Distribution of marine mammals around the action area versus project activity at time of sighting.
15. Though take is not authorized, if a listed marine mammal is taken (i.e., a listed marine mammal(s) is observed entering the <**insert radius in meters>** exclusion zone before pile‐driving operations can be shut down), reinitiation of consultation is required, and the take must be reported to NMFS within one business day (contact listed at item 14 below). PSO records for listed marine mammals taken by project activities must include:
    1. All the information that must be listed in the PSO report.
    2. Number of listed animals taken.
    3. The date and time of each take.
    4. The cause of the take (e.g., impact hammer operating at maximum energy).
    5. The time the animal(s) entered the exclusion zone, and, if known, the time it exited the zone.
    6. Mitigation measures implemented prior to and after the animal entered the exclusion zone.
16. Monthly and final reports and reports of take will be submitted to:

NMFS Protected Resources Division, <**insert office location>** Office

<**insert your NMFS point of contact for receiving monitoring reports**>

# Description of the Action Area

The action area is defined in the ESA regulations (50 CFR 402.02) as the area within which all direct and indirect effects of the project will occur. The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur.

For this project, the action area includes <**provide a description of the geographic area where all project effects/stressors may extend, including latitude and longitude, and name of waterbody. Insert action area figure>**.

*Our ESA Section 7 consultation regulations define “Effects of the Action” to mean the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration” (50 CFR 402.02).*

*Thus, the action area for construction of a new marina may include, for example:*

* Area affected by the dredging
  + Dredging area and disposal area
  + Transit route to disposal area
  + Extent of sediment/turbidity plume during dredging AND disposal
* Area affected by pile driving
  + What is the anticipated distance noise may propagate from the pile driving source to the 120 dB isopleth
  + Extent of sediment disturbance
* Area affected by vessel traffic
  + Number, type, and route of vessels associated with the dredging and/or marina construction to and from the project site as well as operations and functions at the project site and disposal area; new vessel traffic that may result from additional moorings/boat slips
* Area affected by the operation and maintenance of the new marina (an interdependent activity)
  + If there is any activity on land, include it. If the effects of land based activities do not extend into the water, then explain why no listed species will be exposed to effects of land-based activities and, thus, such effects will not be considered further. If effects of land based activities extend into the water, include an assessment of those effects in the consultation.
* The extent of any other direct or indirect effects, including effects of other interrelated or interdependent activities.

# NMFS Listed Species and Critical Habitat in the Action Area

Provide a list of ESA-listed species and critical habitat that are present in the action area [*For more information on NMFS ESA-listed species and critical habitat in Alaska see:* <https://alaskafisheries.noaa.gov/pr/esa-species-list>

<https://alaskafisheries.noaa.gov/mapping/esa/>

*For information on occurrence of humpback whale Distinct Population Segments off Alaska see Humpback Whale Guidance, (*[*link available here*](https://alaskafisheries.noaa.gov/sites/default/files/humpback_guidance.pdf)*).*

*For information on occurrence of western Distinct Population Segment of Steller Sea lion East of 144°W longitude see guidance (*[*link available here*](https://alaskafisheries.noaa.gov/sites/default/files/wdps_sect7guidance1213%20final.pdf)*).*

* *For each species, explain the following:*
  + Seasonality of presence; does it overlap with when the activity will take place?
  + What the individuals are doing there (i.e., foraging, migrating, spawning, overwintering etc.)
  + Duration of species presence (i.e., is it occasional, intermittent, or are they there for days or months at a time)
  + Explain why each species is expected to be in the area where effects will be experienced
  + Describe habitat used by the listed species in the action area
  + For Critical Habitat, describe which physical and biological features are in the action area
  + Ensure that all of the details you provide are relevant to the action area
  + Do not include an extensive overview of species throughout its range or species presence within the waterbody unless it is needed to clarify the rest of your letter

# Effects Determination

* *The “Effects of the Action” section should be organized by effect/stressors, which may result from multiple activities (e.g., you may have subheadings for acoustic impacts and vessel traffic and all activities resulting in those stressors would be discussed under those headings).*
* *For each stressor-*
  + establish if individuals (or essential features of critical habitat) will be exposed to the effect/stressor and if so, which individuals (i.e., life stage, species) or physical or biological feature of critical habitat;
  + explain the consequence of that exposure;
  + if warranted, conclude that the activity will have effects that are discountable (“extremely unlikely to occur”) or insignificant (“unable to be meaningfully measured, detected or evaluated”) or wholly beneficial (positive effects with no associated negative effects) and, consequently, incidental take is not anticipated to occur.
* *It is critical that consultations analyze the effects of the action when added to baseline conditions; that is, what is the effect of the stressors when added to the baseline conditions (e.g., if the area already is very noisy, you consider the effect of additional noise on top of an already noisy environment, or if you are considering vessel traffic you consider the effect of the addition of project related vessels to vessels that are already operating in the action area).* 
  + For example, “When this project is completed, it will not result in an increased number of vessels in the action area, and thus, there is no increased risk of vessel strike in the future. We have also considered the likelihood that an increase in vessel traffic related to the activities associated with the proposed project would generally increase the risk of interactions between marine mammals and vessels in the action area**, in addition to** baseline conditions. The use of a barge will cause a small, localized, temporary increase in vessel traffic. Given the extremely small increase in vessel traffic **above existing levels** in this reach of Icy Strait, there will be no measurable or detectable increase in the risk of vessel strike, and effects to western DPS Steller sea lion and Mexico DPS humpback whales are insignificant.”

# Conclusions

Based on the analysis that all effects of the proposed action will be insignificant and/or discountable, we have determined that <**insert proposed action>** is not likely to adversely affect any listed species or critical habitat under NMFS’s jurisdiction. We have used the best scientific and commercial data available to complete this analysis. We request your concurrence with this determination.

Sincerely,

Signature

# Literature Cited

<**Provide a complete citation for any references included in this letter>** (Please note: the literature cited is very important because in order to determine if we concur with your NLAA determination, we may need to review the literature that you used as a basis for your determination.)