entering either the title of the collection or the OMB Control Number 0648–0573.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR083]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to City and Borough of Juneau Downtown Waterfront Improvement Project

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

ACTION: Notice; modification of an incidental harassment authorization.

SUMMARY: On December 19, 2019, NMFS received a request from the City and Borough of Juneau (CBJ) to modify an incidental harassment authorization (IHA) that was issued to CBJ on May 16, 2019 to take small numbers of harbor seals, by harassment, incidental to the Juneau dock and harbor waterfront improvement project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to modify the IHA. This modification includes changes to the prescribed mitigation and to the amount of authorized take by Level A harassment. The total amount of authorized taking remains the same. There are no changes to the activity, NMFS' findings, the effective dates of the issued IHA, or any other aspect of the IHA. NMFS will consider public comments prior to making any final decision on the requested modification of the authorization and agency responses will be summarized in the final notice of our decision.

DATES: This modified IHA is effective from the date of issuance through July 14, 2020.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as the issued IHA, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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 such 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 such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

History of Request

On October 25, 2018, CBJ submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of harbor seals incidental to the City of Juneau Dock and Harbor waterfront improvement project in Juneau, Alaska. On March 5, 2019, NMFS published a **Federal Register** notice (84 FR 7880) for the proposed IHA. On May 16, 2019, NMFS issued an IHA to CBJ. On May 28, 2019, NMFS published a **Federal Register** notice (84 FR 24490) announcing the issuance of the IHA, which is valid from July 15, 2019, through July 14, 2020.

On December 19, 2019, NMFS received a request from CBJ to modify the 2019 IHA. CBJ subsequently submitted a revised IHA modification request on January 22, 2019, which NMFS determined to be adequate and complete. In the original IHA issued to CBJ, NMFS authorized 72 takes by Level A harassment and 3,454 takes by Level B harassment for harbor seals, and prescribed a shutdown distance of 130 m for impact driving of steel pipe piles. Prior to the start of in-water impact pile driving, CBJ conducted marine mammal abundance survey effort in the vicinity of the project area and found that there were significantly greater numbers of harbor seals present within the immediate vicinity of the construction site than previously estimated. The close proximity of the seals to the pile driving locations would preclude impact pile driving, due to the requirement to clear the 130-m shutdown zone prior to starting up. In addition, CBJ has determined that the high occurrence of harbor seals within the immediate vicinity of the construction site is likely lead to excessive shutdowns during pile driving, which would compromise the timely completion of CBJ's dock and harbor waterfront improvement project on time. CBJ asserts that this renders the prescribed 130-m shutdown zone impracticable, and on the basis of the new information provided by CBJ, NMFS concurs with this determination.

Therefore, CBJ requested to reduce the shutdown distance for impact pile driving from 130 m (as prescribed in the original IHA) to 25 m. As a direct result of this requested change, CBJ determined it necessary to request an increase in the amount of authorized incidents of take by Level A harassment from 72 to 324, while the total amount of authorized taking by harassment remains the same. The original 130-m shutdown zone was designed to avoid most Level A harassment, and was therefore based on the size of Level A harassment radius for impact pile driving. During construction conducted to date, CBJ has not exceeded the authorized amounts of take.

The scope of the project and potential effects to marine mammals in the area remain the same as analyzed previously for the issuance of the IHA in 2019 (84 FR 24490; May 28, 2019).

Comments and Responses

A notice of NMFS' proposal to modify the IHA was published in the **Federal Register** on February 7, 2020 (85 FR 7289). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). Specific comments and responses are provided below.

Comment 1: The Commission states that it is concerned that CBJ did not

conduct observations or provide the number of harbor seals that haul out at haulout site CF07A, which is one of the NMFS Marine Mammal Laboratory's (MML) recognized haulout sites and is closer to the project area. The Commission states that it is apparent that more than 43 harbor seals would be in that area. The Commission thus recommends that NMFS (1) consult with its MML to determine how many harbor seals haul out at haulout sites CF07A and CF10A, (2) if the number of seals observed by MML at CF10A is greater than 43, authorize that number of Level B harassment takes plus the number of seals observed at CF07A but, if the number of seals observed by MML at CF10A is less than 43 authorize 43 takes plus the number of seals observed at CF07A, and (3) refrain from reducing the Level B harassment takes by the Level A harassment takes.

Response: NMFS consulted with MML regarding harbor seal abundance in the vicinity of the project area. MML states that CF07A and CF10A are not considered as key haulout sites because no seals have been observed there for nearly 15 years (J. London, per. comm., 3 March 2020). MML further states that the Commission may be using outdated resources for MML's published waypoint database. Therefore, we believe the local abundance number of an average of 43 animals in the vicinity of the project location, which is based on more recent sightings, is the best available information regarding local occurrence of harbor seals. Additionally, NMFS does not agree with the Commission of including the Level A harassment takes within Level B harassment takes. Under the MMPA, marine mammal harassments are categorized either as Level A or Level B. If an animal is taken by Level A harassment, then it is not taken by Level B harassment.

Comment 2: The Commission notes that CBJ has yet to begin its pile driving activities, and recommends NMFS to extend the end date of the IHA to ensure that CBJ can finish the project by July 14, 2020, when the IHA expires.

Response: NMFS confirmed that CBJ should be able to complete the in-water pile driving activities before the expiration of the IHA. We therefore do not adopt the Commission's recommendation.

Comment 3: The Commission recommends that NMFS ensure that CBJ keeps a running tally of the total Level A and B harassment takes, given the prevalence of harbor seals in the project area and to fulfill condition 4(f) in the authorization.

Response: Condition 4(f) in the IHA issued to CBJ states, ''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, pile driving and removal activities must shut down immediately using delay and shut-down procedures.'' It is unclear how the Commission's recommendation is related to condition 4(f). Regarding the recommended requirement to ''keep a running tally,'' NMFS agrees that CBJ must ensure they do not exceed authorized takes. However, as we have now noted in multiple responses to this same comment, we disagree that inclusion of this specific requirement in IHA language is appropriate and we do not adopt the Commission's recommendation.

Description of the Proposed Activity and Anticipated Impacts

Detailed Description of the Action

The purpose of the CBJ's project is to improve the downtown waterfront area within Gastineau Channel in Juneau, Alaska, to accommodate the needs of the growing cruise ship visitor industry and its passengers while creating a waterfront that meets the expectations of a world-class facility. The project would meet the needs of an expanding cruise ship industry and its passengers by creating ample open space thereby decreasing congestion and improving pedestrian circulation.

The CBJ waterfront improvements project includes constructing a pile supported deck along the waterfront to meet the needs of an expanding cruise ship industry and its passengers by creating ample open space thereby decreasing congestion and improving pedestrian circulation. More details of the CBJ waterfront improvement project are provided in the **Federal Register** notice for the proposed IHA (84 FR 7880; March 5, 2019) and are not repeated here. There is no change from the description of the project activities that is provided in the **Federal Register** notice for the modification of the IHA.

A list of pile driving and removal activities is provided in Table 1. The total number of days that involve in-water pile driving is estimated to be 82 days.

Construction of the CBJ waterfront improvements project is planned between May 15, 2019 and August 31, 2020. The in-water portion of the construction work occurs from July 15, 2019, through July 14, 2020, and is covered under an IHA issued by NMFS on May 16, 2019 (84 FR 24490; May 28, 2019). CBJ has not started in-water pile driving, but is expected to do so as soon as the modified IHA is issued.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING ACTIVITIES

Method	Pile type and size	Total Number piles	Number piles/day	Pile driving/ removal duration (sec.) per pile (vibratory) or strikes per pile (impact)	Work days
Vibratory pile removal	Timber piles, unknown diameter but assumed to be no more than 14-in.	100	10	900	10
Vibratory piling for supported dock	Steel piles, 16-in	*42	5	5,400	9
Impact proofing for supported dock	Steel piles, 16-in	*42	5	150	9
Vibratory piling for supported dock	Steel piles, 18-in	*45	5	5,400	9
Impact proofing for supported dock	Steel piles, 18-in	*45	5	150	9
Vibratory piling for temporary piles	Steel piles, 18-in	87	5	5,400	18
Vibratory pile removal for temporary piles	Steel piles, 18-in	87	5	900	18
Total		274			82

*Vibratory driving and impact proofing will occur on separate days.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in the previous notice (84 FR 7880; March 5, 2019), which remains applicable to the issued IHA modification as well. NMFS is not aware of relevant new scientific information since issuance of the original IHA in May 2019.

A recent marine mammal monitoring effort conducted by CBJ in the project area showed more harbor seal occurrence at the pile driving location than previously expected. However, this information does not necessarily indicate an increase in the regional seal population.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the previous notice (84 FR 7880; March 5, 2019), which remains valid and applicable to the issued IHA modification. NMFS is not aware of new information regarding potential effects.

Anticipated Impact on Subsistence Use

CBJ has contacted the Alaska Department of Fish and Game (ADF&G) regarding potential impact on subsistence use of marine mammal resources. CBJ was notified by ADF&G that the project area in Gastineau Channel is not a subsistence use area for harbor seals. Therefore, the project is not likely to adversely impact the availability of any marine mammal species or stocks that are used for subsistence purposes in the Juneau area.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in the previous notice (84 FR 7880; March 5, 2019). The methods of estimating take by harassment from pile driving and pile removal activities for the original IHA are retained here. The source levels, days of operation, and marine mammal abundance remain unchanged from the previously issued IHA.

While the total number of harbor seal takes by harassment remain the same, the IHA modification allows an increase of Level A harassment due to the reduction of shutdown zone from impact pile driving and, therefore, a reduction in authorized incidents of take by Level B harassment. As stated in the **Federal Register** notice for the final IHA (84 FR 24490; May 28, 2019), the total take number was determined as follows:

Take = animal number in a typical day near the project area × operating days = 43 × 82 = 3,526.

The previously issued IHA required a shutdown distance of 130-m to avoid most Level A harassment, but included authorization of some minimal Level A harassment based on the possibility that harbor seals could enter the shutdown zone unnoticed. We assumed that four seals could enter the Level A harassment zone on each of the 18 days when impact pile driving would occur.

Marine mammal monitoring carried out by CBJ showed that an average of 18 different individual harbor seals could occur within the prescribed 130-m Level A harassment zone, and that they were unlikely to leave the area. Therefore, NMFS and CBJ agreed to adjust the number of Level A harassment calculation by:

Level A harassment = Daily average harbor seals within Level A harassment zone × Impact pile driving days = 18 × 18 = 324.

Subtracting the number of Level A harassment takes from the total take, we derive the number of Level B harassment at 3,202 seals.

A summary of modified estimated takes in relation to population percentage is provided in Table 2.

TABLE 2—ESTIMATED TAKE NUMBERS

Species	Estimated level A take	Estimated level B take	Estimated total take	Abundance
Harbor seal	324	3,202	3,526	9,478

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures prescribed remain the same except that for this IHA modification, the shutdown zone for impact pile driving is reduced to 25 m from the previously required 130 m.

The following additional measures are included in the original IHA:

• Establishment of Shutdown Zone—For all pile driving activities, CBJ will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). For vibratory pile driving and pile removal, shutdown zone is established at 10 m from the pile, which is the same as described in the **Federal Register** notice of the issuance (84 FR 24490; May 28, 2019). As noted above, for impact pile driving, the shutdown zone is modified from 130 m to 25 m from the pile.

• Establishment of Monitoring Zones—CBJ must identify and establish Level A harassment zones. These zones are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in permanent threshold shift (PTS). CBJ will also identify and establish Level B harassment disturbance zones which are areas where sound pressure levels (SPLs) equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (84 FR 24490; May 28, 2019) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in this issued IHA modification.

• Time Restrictions—Work may occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

• Soft Start—The use of a soft start procedure is 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 implement soft start procedures. Soft start is not required during vibratory pile driving and removal activities.

• Visual Marine Mammal Observation—Monitoring must be conducted by qualified protected species observers (PSOs), who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the original IHA (84 FR 24490; May 28,

2019). In order to effectively monitor the pile driving monitoring zones, a minimum of two PSOs must be positioned at the best practical vantage point(s). PSOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the original IHA (84 FR 24490; May 28, 2019). At the conclusion of the in-water construction work, CBJ will provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the total number of marine mammals that may have been harassed.

Determinations

The activities to be conducted by CBJ in the modified IHA are the same as those analyzed in the original IHA.

The reduction of shutdown zones for impact pile driving, and the resulting increase of Level A harassment of harbor seals do not change our original analysis and determination. Although some individual harbor seals are estimated to experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. Impact pile driving for each pile would last for approximately 30 minutes. After that, the contractor would take 5 to 30 minutes to start the next pile. In addition, it is expected that, if hearing impairment occurs, most likely the affected animal would lose a few decibels (dB) in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that might occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz.

Under the majority of the circumstances, anticipated takes are expected to be limited to short-term Level B harassment. Harbor seals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. Given the limited estimated number of incidents of total harassment and the limited, short-term nature of the responses by the individuals, the impacts of the estimated take cannot be reasonably expected to, and are not reasonably likely to, rise to the level that they would adversely affect the species at the population level, through effects on annual rates of recruitment or survival.

There are no known important habitats, such as rookeries or haulouts, in the vicinity of the CBJ's waterfront improvement construction project. The project also is not expected to have significant adverse effects on affected marine mammals' habitat, including prey, as analyzed in detail in the **Federal Register** notice of the issuance of the existing IHA (84 FR 24490; May 28, 2019). In conclusion, there is no new information suggesting that our analysis or findings should change.

The estimated take of harbor seal would be 37 percent of the population, if each single take were a unique individual. However, this is highly unlikely because the harbor seal in the vicinity of the project area shows site fidelity to small areas for period of time that can extend between seasons, as discussed in detail in the **Federal Register** notice for the issuance of the existing IHA (84 FR 24490; May 28, 2019). The total number of harbor seals that is authorized to be taken has not changed. Based on the analysis contained herein of the activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of harbor seal will be taken relative to the population size of the affected species or stocks.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) CBJ's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

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 review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 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 determined that the issuance of the original IHA qualified to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued a modification to an IHA to the City and Borough of Juneau for the Juneau Dock and Harbor waterfront improvement project in Juneau, Alaska, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 30, 2020.

Donna S. Wieting,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Antarctic Marine Living Resources Conservation and Management Measures.

OMB Control Number: 0648–0194.

Form Number(s): None.

Type of Request: Regular (revision of an existing collection).

Number of Respondents: 87.

Average Hours per Response: One hour to apply for a CEMP research permit; 1 hour to report on research; 28 hours to supply information on