

listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 8.32 percent, the all-others rate established in the less-than-fair-value investigation.<sup>17</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

#### Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results, and rebuttal comments (rebuttal briefs), limited to issues raised in case briefs, within seven days after the time limit for filing case briefs.<sup>18</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>19</sup> Case and rebuttal briefs should be filed using ACCESS<sup>20</sup> and must be served on interested parties.<sup>21</sup> Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to

the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.<sup>22</sup> Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.<sup>23</sup> Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.<sup>24</sup>

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 17, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Partial Rescission of Administrative Review
- V. No Shipments Claims
- VI. Companies Not Selected for Individual Examination
- VII. Affiliation and Collapsing
- VIII. Comparisons to Normal Value

- IX. Date of Sale
- X. Export Price and Constructed Export Price
- XI. Normal Value
- XII. Currency Conversion
- XIII. Recommendation
- Attachment: Scope of Order

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XA639]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Service Pier Extension Project on Naval Base Kitsap Bangor, Washington

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

**ACTION:** Notice; proposed modification of an incidental harassment authorization; request for comments.

**SUMMARY:** NMFS received a request from the United States Navy (Navy) on October 14, 2020, for a modification to the incidental harassment authorization (IHA) that was issued on July 3, 2019 due to an elevated harbor seal take rate that was unanticipated. A small group of harbor seals (*Phoca vitulina*) repeatedly entered into and remained within the Level A harassment zone, resulting in a take rate that was projected to exceed the authorized limit for this species. The Navy felt that without an increase in authorized take of harbor seal they would be forced to repeatedly shut down whenever animals entered into specified Level A harassment zones, which would impede their ability to get the work done in the time needed. Therefore, NMFS is proposing to modify the IHA to increase authorized take by Level A harassment of harbor seal. NMFS is also proposing to revise the shutdown mitigation provisions for harbor seals in the modified IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA and no additional take was requested for other species. NMFS will consider public comments on the requested modification prior to making any final decision and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than December 9, 2020.

<sup>17</sup> See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016), as amended by *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results*, 83 FR 39054 (August 8, 2018).

<sup>18</sup> See 19 CFR 351.309(d).

<sup>19</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>20</sup> See generally 19 CFR 351.303.

<sup>21</sup> See 19 CFR 351.303(f).

<sup>22</sup> See 19 CFR 351.310(c).

<sup>23</sup> See 19 CFR 351.310(d).

<sup>24</sup> See section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to [ITP.pauline@noaa.gov](mailto:ITP.pauline@noaa.gov).

**Instructions:** NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, 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.

**History of Request**

On June 28, 2018, NMFS published a notice of our issuance of an IHA authorizing take of five species of marine mammals by Level A and Level B harassment incidental to the Service Pier Extension project (83 FR 30406). Species authorized for take included killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), and harbor seal (*Phoca vitulina*). The effective dates of that IHA were July 16, 2019, through July 15, 2020. On February 4, 2019, the Navy informed NMFS that the project was being delayed by one full year. None of the work identified in the initial IHA had occurred and no marine mammals had been taken before the effective date of the initial IHA (July 16, 2019 through July 15, 2020). Therefore, the Navy submitted a formal request for reissuance of the initial IHA with new effective dates of July 16, 2020, through July 15, 2021, and NMFS re-issued the IHA (84 FR 31844; July 3, 2019). The IHA covered construction and demolition work identical to what was analyzed and authorized through the initial IHA.

On October 14, 2020, NMFS received a request from the Navy for a modification to the current IHA due to an elevated harbor seal take rate. The Navy felt that without an increase in authorized take of harbor seal they would be forced to repeatedly shut down whenever animals entered into specified Level A harassment zones. This would likely prolong the duration of in-water construction activities and add increased costs to the project. Therefore, the Navy is requesting and NMFS is proposing to modify the IHA to increase authorized take of harbor seal by Level A harassment. Furthermore, NMFS is proposing revise

the shutdown mitigation provisions as part of the modified IHA which would still expire on July 15, 2021. The monitoring and reporting measures remain the same as prescribed in the initial IHA and no additional take is requested or proposed for species other than harbor seal.

**Description of the Proposed Activity and Anticipated Impacts**

The modified IHA would include the same construction activities (*i.e.*, impact pile driving, vibratory pile driving, vibratory pile removal) in the same locations that were described in the initial IHA. The monitoring and reporting measures remain the same as prescribed in the initial IHA, while revisions to the required mitigation measures have been proposed. NMFS refers the reader to the documents related to the initial IHA issued on June 28, 2018 (83 FR 30406), for more detailed description of the project activities. Other relevant documents include the notice of proposed IHA and request for comments (83 FR 10689; March 12, 2018) and notice of reissued IHA (84 FR 31844, July 3, 2019).

*Detailed Description of the Action*

A detailed description of the survey activities is found in these previous documents. The location, timing, and nature of the activities, including the types of piles and methods of installation and removal are identical to those described in the previous notices.

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA.

*Potential Effects of Specified Activities 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 documents supporting the initial IHA, which remains applicable to the issuance of this modified IHA. With the exception of harbor seal exposures, there is no new information on potential effects.

For harbor seals, observations indicate that a group of eight individuals is regularly present in relatively close proximity to the pile driving operations.

Given this, there is a higher likelihood than initially considered that these animals may incur permanent threshold shift (PTS) at a low-moderate level due to the repeated, longer-duration exposure to higher levels of sound.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of issuance of the IHA for the initial authorization (83 FR 30406; June 28, 2018). The types and sizes of piles, installation methods, and marine mammal stocks taken remain unchanged from the previously initial IHA. The number of authorized takes is also identical with the exception of harbor seal.

The in-water work window (when Endangered Species Act (ESA)-listed salmonids are least likely to be present) runs from July 16, 2020 through January 15, 2021. Pile installation started September 4, 2020 with both vibratory and impact pile drivers being employed. After in-water work commenced, protected species observers (PSOs) began recording a specific group of harbor seals that consistently entered

and remained in the Level A harassment zone. (Note that the term PSO has replaced marine mammal observer (MMO) in this notice as well as the draft modified IHA, although the functions and duties of each are identical.) This has resulted in excessive shutdowns. Due to these frequent shutdowns pile installation is behind schedule. PSOs have identified at least eight harbor seals that frequent the project area and have become habituated to the in-water construction work. These seals include four pups and four adults which have all been individually identified. Three of the pups are seen in the project area on almost a daily basis. The pups approach the work site repeatedly during the day and stay in the work area for up to 90 minutes. Two of the pups and all of the adults have had occasional behavioral reactions to pile driving activity. For example, PSOs have recorded seals occasionally exhibiting behaviors such as startled response and fast swimming away from the activity.

NMFS had authorized 125 takes by Level A harassment of harbor seal under the current IHA. As of October 27, 2020, 54 days of in-water work had been

completed with the PSOs reporting 87 takes of harbor seal by Level A harassment. With 80 in-water working days remaining between October 28, 2020 and January 15, 2021, the Navy expected, and NMFS concurred, that they would likely exceed authorized take. Note that the number of in-water work days was originally scheduled to be 125 days in the initial IHA. However, due to delays and shutdowns the total estimated number of work days has been updated to 134.

The Navy used NMFS User Spreadsheet to calculate the Level A harassment isopleths associated with project activities. Inputs to the model for the initial IHA are shown in Table 1. This model calculated a 217-m Level A harassment isopleth for phocids (*i.e.* harbor seals) during impact driving of 36-in steel piles. The size of this PTS harassment zone for 36-steel pile impact driving is relatively large compared to PTS zones for both impact and vibratory driving of other pile types and sizes. The large zone size and habituation of a limited number of seals has contributed to a greater phocid take rate than was initially calculated.

TABLE 1—INPUTS FOR DETERMINING DISTANCES TO CUMULATIVE PTS THRESHOLDS

Spreadsheet tab used	E.1) Impact pile driving	
	Initial IHA inputs	Modified IHA
Source Level (Single Strike/shot SEL) .....	173 dB (assumes 8 dB attenuation) <sup>1</sup> .	177 dB (assumes 8 dB attenuation) <sup>2</sup>
Weighting Factor Adjustment (kHz) <sup>3</sup> .....	Weighting override (Grebner <i>et al.</i> 2016).	Weighting override (Grebner <i>et al.</i> 2016)
Number of strikes per day .....	1,600 .....	1,600.
Number of piles per day within 24-h period .....	2 .....	2.
Propagation (xLogR) .....	15 .....	25.
Distance of source level measurement (meters) .....	10 .....	10.

<sup>1</sup> Navy 2015.

<sup>2</sup> Wood *et al.* 2020.

<sup>3</sup>For impact driving, the Transmission Loss model described above incorporated frequency weighting adjustments by applying the auditory weighting function over the entire 1-second SEL spectral data sets. Additional information may be found in the **Federal Register** notice of issuance of a final IHA (83 FR 30420; June 28, 2018).

The Navy conducted sound source verification (SSV) testing in September 2020 and compared the results to values generated by the NMFS User Spreadsheet in the initial IHA. Due to some of assumptions built into the model, the User Spreadsheet generates PTS isopleths that are potentially overestimates. Testing was conducted during impact driving of four 36-in steel piles both with and without bubble curtains and recorded values were inserted into the use spreadsheet. The acoustic data for each pile strike were

frequency weighted for phocidae following NMFS guidance (2016) and then averaged. This resulted in an average phocid weighted single strike SEL of 177 dB re 1µPa2s at 10 m. Using the measured transmission loss of 25 (far field) and an assumption of 1,600 strikes per day, the resulting isopleth for phocids was 92 meters (Wood *et al.* 2020)

With NMFS' approval, the Navy retroactively utilized the revised Level A harassment isopleth of 92 m and recalculated the harbor seal take.

Distances to each taken animal were recorded as part of the marine mammal monitoring plan. This reduced the total take count by 29, bringing the revised total from 87 to 58 takes. Approximately 33 percent of total takes occurred during impact driving outside the 92 m zone. A reduction in shutdown zone size based on SSV data in combination with a retroactive recalculation of take would allow continuation of in-water construction during the public comment period and while the modified IHA is being finalized if we were to issue it.

While vibratory is the preferred method of installation, impact driving has been needed daily due at the project site, largely due to sediment conditions. Additionally, there is a 30-m shut down zone (26 m-injury zone) during vibratory driving. The PSOs report that three habituated individuals frequently approach in close proximity to the piles within the 30-m shutdown zone during vibratory driving. Given these factors, additional takes would still be needed, even if the Level A harassment isopleth during impact driving is reduced from 217 m to 92 m.

PSOs report that up to eight animals frequent the project site and are believed to be habituated by varying degrees to in-water construction activities. Some of them regularly enter and remain within Level A harassment and shutdown zones. Three of these individuals already noted above appear daily in the Level A harassment zone, while the remainder of the group of eight are observed less frequently (every

other or every third day). All eight seals have been observed in the previous Level A harassment zone on some occasions, with an average of five to six seen on each day. However, we also note that the area ensounded above the Level A harassment threshold has been reduced by approximately 33 percent. The Navy requested that NMFS authorize an additional four takes by Level A harassment per day. This would allow for one take per day by Level A harassment for each of the three daily visitors (three takes per day), as well as one additional Level A harassment take per day that could be incurred by any of the other five individuals if one of them entered the shutdown zone each day prior to detection, or if a few of them entered every few days. Based on the information provided, NMFS estimates an average of four harbor seal takes per day by Level A harassment would occur.

Based upon pile installation rates achieved to date, all of the days

remaining within the in-water work window (80) will be needed to complete this segment of the project before the current work window closes. NMFS is proposing to increase authorized takes of harbor seal by Level A harassment by 320 (4 takes/day \* 80 days) between now and January 15 in addition to the initial 125 takes, for a total of 445, most of which will occur to a smaller number of habituated individuals.

The total numbers of incidental takes by Level A and Level B harassment, including proposed updated harbor seal Level A harassment and as a percentage of population, is shown in Table 2 below. The total number of takes (Level A and Level B harassment combined) has not changed because the new Level A takes are assumed to occur to animals that would have previously been counted as taken by Level B harassment. Therefore, NMFS is proposing to reduce authorized Level B harassment take of harbor seal from 5,600 to 5,280.

TABLE 2—TOTAL NUMBERS OF AUTHORIZED TAKES BY LEVEL A AND LEVEL B HARASSMENT AND AS A PERCENTAGE OF POPULATION

Species	Authorized take		Percent population
	Level A	Level B	
Killer whale .....	0	48	19.7
Harbor porpoise .....	0	2,728	24.3
Steller sea lion .....	0	503	1.2
California sea lion .....	0	7,816	2.6
Harbor seal .....	445	5,280	n/a

Since the total number of combined takes by Level A and Level B harassment remains unchanged (5,725) from the number authorized in the existing IHA, the rationale supporting our small numbers determination for the Hood Canal stock of harbor seal is applicable here and remains valid.

*Description of Mitigation, Monitoring and Reporting Measures*

With the exception of the revised shutdown provisions for harbor seals discussed below, the monitoring, and reporting measures described here are identical to those included in the **Federal Register** notice announcing the initial IHA (83 FR 30406; June 28, 2018).

*Use of Vibratory Installation*—The Navy will employ vibratory installation to the greatest extent possible when driving steel piles to minimize high sound pressure levels associated with impact pile driving. Impact driving of steel piles will only occur when required by geotechnical conditions or to proof load-bearing piles driven by vibratory methods.

*Timing Restrictions*—To minimize the number of fish exposed to underwater noise and other construction disturbance, in-water work will occur during the in-water work window previously described when ESA-listed salmonids are least likely to be present (USACE, 2015), July 16–January 15.

All in-water construction activities will occur during daylight hours (sunrise to sunset) except from July 16 to September 15, when impact pile driving will only occur starting 2 hours after sunrise and ending 2 hours before sunset, to protect foraging marbled murrelets during the nesting season (April 15–September 23).

*Use of Bubble Curtain*—A bubble curtain will be employed during impact installation or proofing of steel piles where water depths are greater than 0.67 m (2 ft). A noise attenuation device is not required during vibratory pile driving. If a bubble curtain or similar measure is used, it will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure

must provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

A performance test of the bubble curtain shall be conducted prior to initial use for impact pile driving. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. The contractor shall also train personnel in the proper balancing of air flow to the bubble curtains. The contractor shall submit an inspection/performance report to the Navy for approval within 72 hours following the performance test. Corrections to the noise attenuation device to meet the performance standards shall occur prior to use for impact driving.

*Soft-Start*—During impact driving the Navy is required to initiate sound from the hammer at reduced energy followed

by a 30 second waiting period, then two subsequent reduced energy strike sets.

A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes.

**Establishment of Shutdown Zones and Disturbance Zones**—For all impact and vibratory pile driving of piles, shutdown and disturbance zones will be established and monitored. All shutdown and disturbance zones remain the same as those included in the initial IHA, except for the shutdown zone for harbor seals during impact driving of steel piles for which the modifications are described below. The Navy will focus observations within 1,000 m for all species during these activities but will record all observations. During impact driving of concrete piles the Navy will focus on monitoring within 100 m but will record all observations. The Navy will monitor and record marine mammal observations within zones and extrapolate these values across the entirety of the Level B zone as part of the final monitoring report. To

the extent possible, the Navy will record and report on any marine mammal occurrences, including behavioral disturbances, beyond 1,000 m for steel pile installation and 100 m for concrete pile installation.

The shutdown zones are based on the distances from the source predicted for each threshold level. Although different functional hearing groups of cetaceans and pinnipeds were evaluated, the threshold levels used to develop the disturbance zones were selected to be conservative for cetaceans (and therefore at the lowest levels); as such, the disturbance zones for cetaceans were based on the high frequency threshold (harbor porpoise). The shutdown zones are based on the maximum calculated Level A harassment radius for pinnipeds and cetaceans during installation of 36-inch steel and concrete piles with impact techniques, as well as during vibratory pile installation and removal. These actions serve to protect marine mammals, allow for practical implementation of the Navy's marine mammal monitoring plan and reduce

the risk of a take. The shutdown zone during any non-pile driving activity will always be a minimum of 10 m (33 ft) to prevent injury from physical interaction of marine mammals with construction equipment.

During impact pile driving of steel piles, the shutdown, Level A, and Level B zones as shown in Table 3 will be monitored out to the greatest extent possible with a focus on monitoring within 1,000 m for steel pile and 100 m for concrete pile installation.

The Navy's IHA allows for the modification of shutdown zones if hydroacoustic monitoring is conducted. The Navy conducted a SSV test since the initial IHA was issued and it indicates that the Level A harassment isopleth for harbor seals occurs at 92 m instead of 217 m. Therefore, at the Navy's request and with concurrence from NMFS, the shutdown zone has been reduced from 220 m to 95 m during impact driving of all steel piles (*i.e.*, both 36-in and 24-in steel piles). This is the only change to Level A or Level B harassment zone size proposed as part of this modified IHA.

TABLE 3—SHUTDOWN, LEVEL A, AND LEVEL B HARASSMENT ISOPLETHS DURING IMPACT DRIVING OF STEEL PILES

Marine mammal group	Level B isopleth	Level A isopleth	Shutdown zone
Cetaceans .....	541 meters .....	740 meters .....	750 meters.
Harbor Seal .....	541 meters .....	92 meters .....	95 meters.
Sea Lions .....	541 meters .....	12 meters .....	15 meters.

The shutdown, Level A, and Level B isopleths for all other impact driving remains unchanged from the notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018).

The reduced size of the shutdown zone for harbor seals along with the increase in authorized take by Level A harassment should preclude the Navy from exceeding its authorized take limit for this species. However, even with a 95-m shutdown zone during impact driving and a 30-m shutdown zone during vibratory driving, it is highly likely that the Navy will continue to experience frequent work stoppages due to frequent visits by habituated harbor seals. This will result in continued schedule delays and cost overruns and may potentially require an extra year of in-water construction activities. Given this information, it is not practicable for the Navy to shut down or delay pile driving activities every time a harbor seal is observed in a shutdown zone.

Therefore, shutdowns will be initiated for harbor seals when observed approaching or entering the Level A harassment zones as described above, except when one or more of the three

habituated harbor seals identified as daily visitors approaches or enters an established shutdown zone. In such cases, a single take by Level A harassment shall be recorded for each individual seal for the entire day and operations will be allowed to continue without interruption. The behavior of these three daily visitors will be monitored and recorded as well as the duration of time spent within the harassment zones. This information will be recorded individually for each of the three seals. If any other seals, including the five habituated seals identified as frequent visitors, approaches or enters into a Level A harassment zone, shutdown must occur.

The minimum shutdown zone during any pile driving activity will always be a minimum of 10 m (33 ft). Shutdown is mandatory whenever an animal is within 10 m of pile driving location regardless of the exception noted above. In such instances, in-water pile driving operations may only continue after 15 minutes have passed or the animal is seen heading away from the 10-m shutdown zone.

The revisions in the mitigation, including the shutdown exception for habituated harbor seals, are necessary to allow for the practicable completion of the Navy's specified activities. Although the predicted Level A harassment take numbers are higher than initially projected because of the behavior of the eight habituated animals, the likelihood of Level A take of other individuals is lower than initially expected because the Level A harassment zone is smaller than initially predicted based on the new SSV. NMFS has considered the revised mitigation measures for harbor seals and determined that they will effect the least practicable adverse impact on harbor seals and their habitat. Nothing has changed since the initial IHA for other species or stocks and our analysis and conclusions remain the same.

**Visual Monitoring**—Monitoring must be conducted by qualified protected PSOs with minimum qualifications described in the **Federal Register** notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). During pile driving, there will be three-five PSOs working depending on the location, site

accessibility and line of sight for adequate coverage.

**Reporting**—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the initial IHA (83 FR 30406; June 28, 2018). Within 90 days after completion of pile driving and removal activities, the Navy must provide NMFS with a monitoring report which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed. 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.

**In the unanticipated event that:** (1) 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; (2) an injured or dead animal is discovered and cause of death is known; or (3) an injured or dead animal is discovered and cause of death is not related to the authorized activities, the Navy will follow the protocols described in the Section 3 of Marine Mammal Monitoring Report (Appendix D of the application).

Based on our evaluation of the applicant's measures in consideration of the increased estimated take for harbor seals, as well as the modified shutdown provisions for harbor seals, NMFS has re-affirmed the determination that the required mitigation measures provide the means effecting the least practicable impact on harbor seals and their habitat.

#### **Preliminary Determinations**

With the exception of the revised harbor seal shutdown provisions, the Navy's in-water construction activities as well as monitoring and reporting requirements are unchanged from those in the initial IHA. The effects of the activity on the affected species and stocks, taking into consideration the modified mitigation and related monitoring measures, remain unchanged, notwithstanding the increase to the authorized amount of harbor seal take by Level A harassment. The nature of the pile driving project precludes the likelihood of serious injury or mortality. While injury could occur in a small group of habituated animals (eight or fewer), it would likely be limited to PTS at lower frequencies where pile driving energy is concentrated, and unlikely to result in significant impacts to individual fitness, reproduction, or survival of these individuals whose best hearing is in a higher frequency range.

With approximately 80 in-water construction days remaining, NMFS is proposing to increase authorized harbor seal take by Level A harassment to 445. Even in consideration of the increased numbers of take by Level A harassment, the impacts of these exposures, as noted above, may result in moderate injury to a limited number of harbor seals but are not expected to accrue to the degree that the fitness of any individuals is markedly impacted. Further, given the small number of individuals potentially impacted in this manner, no impacts on annual rates of recruitment or survival are likely to result.

Separately, as described previously, the increase in Level A harassment take corresponds to a commensurate decrease in the predicted number of Level B harassment and the total number of takes remains unchanged. Therefore, we re-affirm that small numbers of harbor seals will be taken relative to the population size of the Hood Canal stock of harbor seal.

In conclusion, there is no new information suggesting that our negligible impact analysis or finding for harbor seals should change.

Based on the information contained here and in the referenced documents, NMFS has preliminarily reaffirmed the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) small numbers of marine mammals will be taken relative to the affected stock abundances; and (4) the Navy'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 modification of an IHA) 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 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 has preliminarily determined that the issuance of the modified IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

#### **Proposed Authorization**

NMFS proposes to modify the IHA to the Navy for in-water construction associated with the SPE project on Naval Base Kitsap Bangor, Washington effective until July 15, 2021. The only change is an increase in the authorized take of harbor seal take by Level A harassment from 125 to 445. A draft of the proposed modified IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

#### **Request for Public Comments**

We request comment on our proposed modification of the IHA for the Navy's in-water construction activities associated with the SPE project. We also request comment on the potential for renewal of this modified IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization or subsequent Renewal IHA.

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, or nearly identical, activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Proposed Activity and Anticipated Impacts section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that

described in this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial 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).

(2) 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.

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 in the initial IHA remain valid.

Dated: November 19, 2020.

**Donna S. Wieting,**

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

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## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection

#### Activities: Notice of Intent To Renew Collection 3038-0082, Whistleblower Provision

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is announcing an opportunity for public comment on the extension of a proposed collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the reporting requirements related to the Whistleblower Provision.

**DATES:** Comments must be submitted on or before January 25, 2021.

**ADDRESSES:** You may submit comments, identified by OMB Control No. 3038-0082 by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov>. Follow the instructions for submitting comments through the website.

- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Ehrman, Director, Whistleblower Office, Commodity Futures Trading Commission, (202) 418-7650; email: [cehrman@cftc.gov](mailto:cehrman@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission’s estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Title:* The Whistleblower Provision of Section 23 of the Commodity Exchange Act, OMB Control Number 3038-0082. This is a request for extension of a currently approved information collection.

*Abstract:* 17 CFR 165.3(a) requires the submission of information to the Commission on a Form TCR. The Form TCR, “Tip, Complaint, or Referral,” and the instructions thereto, are designed to capture basic identifying information about a complainant and elicit sufficient information to determine whether the conduct alleged suggests a violation of the Commodity Exchange Act. 17 CFR 165.7(b)(1) requires the submission of information to the Commission on a Form WB-APP. The Form WB-APP, “Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act,” and the instructions thereto, are designed to elicit sufficient information to determine whether and to what extent a claimant qualifies for a whistleblower award.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission’s regulations.<sup>1</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

<sup>1</sup> 17 CFR 145.9.