

veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as “solid bamboo”); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m<sup>3</sup> permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of these Orders are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of these Orders is “ready to assemble” (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of these Orders are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of these Orders are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, (2) all accessory parts (*e.g.*, screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and (3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of these Orders are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of these Orders are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of these Orders are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these Orders is dispositive.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA966]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

**ACTION:** Notice; proposed issuance of an Incidental Harassment Authorization; request for comments.

**SUMMARY:** NMFS has received a request from Chevron Products Company (Chevron) for an incidental harassment authorization (IHA), that would cover a subset of the take authorized in IHAs previously issued to Chevron, to incidentally take marine mammals, by Level B harassment only, during construction activities associated with the Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California. However, some changes have occurred during this year’s evaluation of the project. Hydroacoustic monitoring data has led to changes in source levels and other noise generating criteria that affect Level A and Level B harassment and shutdown zones. The local abundance for one population has increased. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible 1 year renewal IHA that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than May 6, 2021.

**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.Meadows@noaa.gov](mailto:ITP.Meadows@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:** Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application, 2019 and 2020 IHAs, and supporting documents (including NMFS **Federal Register** notices of the earlier proposed and final authorizations, and the previous IHAs), 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 is 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 here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

**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 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 proposed 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.

**History of Request**

On February 1, 2018, NMFS received a request from Chevron for an IHA to take marine mammals incidental to pile driving and pile removal associated with the LWMEP in San Francisco Bay, California. An IHA was issued on May 31, 2018 (83 FR 27548, June 13, 2018). Chevron was unable to complete all of the planned work and was issued a second IHA on June 1, 2019 (84 FR 28474, June 19, 2019) and when the work was again not completed a Renewal IHA was issued on June 11, 2020 (85 FR 37064; June 19, 2020). Chevron was again unable to complete the work in 2020 and on February 24, 2021 requested a new IHA to authorize take of marine mammals for the subset of the initially planned work that could not be completed. The application was deemed adequate and complete on March 22, 2021. Chevron requested the

new IHA be effective from June 1, 2021 through May 31, 2022. Chevron does not qualify for an additional renewal IHA, but given the proposed work is a subset of that which has been previously analyzed, we will be referencing the prior authorization except where activities or analysis have changed as described below.

**Description of the Specified Activities and Anticipated Impacts**

As described in the 2018, 2019 and 2020 IHAs, Chevron is upgrading Long Wharf to comply with current Marine Oil Terminal Engineering and Maintenance Standards and in order to accept more modern, fuel efficient vessels. The remaining work includes installing four new standoff fenders and removing obsolete piles at Berth 2 and installing four new dolphins and removing temporary piles associated with the prior work at Berth 4. Remaining construction at Long Wharf includes vibratory pile installation of 52 14-inch composite piles, vibratory removal of 150 piles (eight 36-inch steel piles, 36 14-inch steel H piles, and 106 16-inch timber piles) and impact installation of nine 24-inch concrete piles (Table 1). Note some pile sizes were described with various diameters in prior notifications (e.g., the composite piles are tapered and their diameter ranges from 12 to 14 inches and they are now described by their widest diameter) but there is no change to actual planned piles. The activities consist of 36 days of in-water work. Pile driving and removal activities will continue to occur within the standard NMFS work windows for Endangered Species Act (ESA)-listed fish species (June 1 through November 30).

Vibratory pile removal and installation and impact pile installation will introduce underwater sounds that may result in take, by Level B harassment, of seven species of marine mammals in San Francisco Bay. This IHA proposes to authorize the remaining take associated with the work not completed under the prior IHAs. The H piles and 36-inch piles were not part of the 2020 renewal IHA but were part of earlier IHAs for this project. The H-piles were noted as temporary piles in the 2018 IHA application although Chevron was in the process of determining the permitting requirements to leave these fender piles in place. In the 2019 IHA application Chevron had included the 36-inch piles as temporary and listed the activities as installation and removal. The piles were installed in 2019. Chevron had been considering leaving the 36-inch piles in place as well. Chevron has since

reconsidered leaving any of the temporary piles in place and has decided to remove the H-piles at Berth 2 and the 36-inch piles at Berth 4. Therefore, removal of these piles is included in the 2021 application.

The prior IHAs included Level A harassment take associated with installation of larger piles that has since been completed, therefore no Level A harassment take is requested or proposed for this IHA. The earlier proposed and final IHA documents, monitoring report, and public comments

can be found on our project web page at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-old-sitka-dock-north-dolphins-expansion-project-sitka-alaska>.

*Detailed Description of the Activity*

A detailed description of the demolition and construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the 2018, 2019 and 2020 IHAs. The location, and nature of the activities, including the types of equipment planned for use, are identical

to those described in the previous notices.

As part of the prior authorizations Chevron was required to conduct hydroacoustic monitoring of their pile driving. Based on this monitoring Chevron has applied updated estimates of strikes per pile to drive 24-inch concrete piles and source levels and transmission loss coefficients for multiple pile sizes. Below we update our analysis and the Level A and Level B harassment isopleths and shutdown zones based on these new data.

TABLE 1—PILE DRIVING DETAILS FOR WORK REMAINING TO BE COMPLETED

Pile type and number per day	Pile driver type	Number of piles	Number of driving days	Strikes/pile	Time/pile (min)
36-inch steel pipe pile (4/day) .....	Vibratory removal .....	8	2	N/A	5
14-inch H pile removal (6/day) .....	Vibratory removal .....	36	6	N/A	5
24-inch concrete (1–2/day) .....	Impact install .....	9	8	440	20
14-inch composite (5/day) .....	Vibratory install .....	52	11	N/A	10
16-inch timber pile (12/day) .....	Vibratory removal .....	106	9	N/A	6.67

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the 2019 and 2020 authorization. NMFS has reviewed the monitoring data from the 2020 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2019 and 2020 IHAs.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the 2018 authorization. NMFS has reviewed the monitoring data from the 2019 and 2020 IHAs, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that, besides the revised source information harbor seal occurrence mentioned above and analyzed below, neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of the final 2018 and 2019 IHAs. As noted above, hydroacoustic monitoring from prior years has changed the source levels, transmission loss coefficients, time and strikes to drive piles for various of the pile sizes. Instead of referencing prior discussions of these topics we provide complete details of the pile driving parameters used to compute the Level A and Level B harassment isopleths for this proposed IHA in Tables 1 and 2. Based on these revised inputs the Level A and Level B harassment isopleth radii from the NMFS User Spreadsheet are shown for all pile sizes in Tables 2 and 3.

TABLE 2—PILE DRIVING SOURCE LEVELS AND CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS [Sound source reference in italics]

Pile type and sound source reference	Transmission loss coefficient	Source levels at 10 meters (dB) unless noted		Distance to Level A threshold (meters)				
		Peak	RMS/SEL	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Attenuated Impact Driving (with bubble curtain): 24-inch square concrete (2018 acoustic monitoring).	15	191	161 SEL .....	31	1	37	17	1
Vibratory Driving/Extraction: 14-inch Composite Barrier Pile (Laughlin 2012).	15	178	168 RMS .....	18	2	26	11	1
36-inch steel pipe pile (2019 acoustic monitoring).	20	196	167 RMS @15 m.	13	2	17	9	1
14-inch H pile (2018 acoustic monitoring).	20	165	150 RMS .....	2	1	2	1	1
16-inch timber pile (WSDOT 2011).	15	N/A	152 RMS .....	2	1	3	1	1

Notes: SEL = sound exposure level, RMS = Root Mean Square.

TABLE 3—DISTANCES TO LEVEL B THRESHOLDS AND SIZE OF THE LEVEL B HARASSMENT ZONE FOR EACH PILE TYPE

Pile type	Level B harassment isopleth (meters)	Area of Level B zone (square kilometers)
Attenuated Impact Driving (with bubble curtain):		
24-inch square concrete .....	74	0.01
Vibratory Driving/Extraction:		
14-inch Composite .....	15,849	26.5
36-inch steel pipe .....	* 3,358	4.04
14-inch H .....	* 316	0.05
16-inch timber .....	1,359	0.9

\* Using transmission loss coefficient and source levels from hydroacoustic monitoring.

The stocks taken, methods of take, and types of take remain unchanged from the previously issued IHAs. The only change to the marine mammal density/occurrence data used to calculate take is an increase in harbor seal abundance at the Castro Rocks haulout. Castro Rocks are part of the survey area for long-term National Park Service (NPS) monitoring studies of harbor seal colonies within the Golden Gate National Recreation Area that have been conducted since 1976. The take estimates for this stock for this project have been based on the highest mean plus the standard error of harbor seals observed at Castro Rocks during recent annual surveys conducted by the NPS during the molting season. Based on the most recent surveys (Codde 2020, Codde and Allen 2020) and using the methods from the prior IHAs, the current daily abundance for use in calculating take of this stock would increase to 376 seals. However, given the prior monitoring results, the smaller pile sizes left to be driven or removed, and their location and distance from Castro Rocks, we are reverting to our more common practice of using the mean abundance estimate to estimate take. The mean using the most recent data is 237 animals per day

(an increase from 176). Therefore, Level B harassment take for this stock is the estimated daily abundance in the project area (237) times the number of days of in-water work (36), resulting in a proposed authorization for Level B harassment of 8,532 harbor seals. Because the Level A harassment zones are small and we believe the Protected Species Observers (PSOs) will be able to effectively monitor the Level A harassment zones and implement shutdowns, we do not propose to authorize take by Level A harassment for this or any other stock.

For the remaining species take is estimated as follows (using the same criteria as prior IHAs). It is possible that a lone northern elephant seal may enter the Level B Harassment area once every 3 days during pile driving, resulting in a proposed authorization for Level B harassment of 12 northern elephant seals. While no northern fur seals have been observed in the 2018–2020 monitoring for this project, the incidence of northern fur seal in San Francisco Bay depends largely on oceanic conditions, with animals more likely to occur during El Niño events. As in prior IHAs, we propose authorization for Level B harassment of

10 northern fur seals. While no bottlenose dolphins have been observed in the 2018–2020 monitoring for this project, this species occurs intermittently in San Francisco Bay. As in prior IHAs, we propose authorization for Level B harassment of 30 bottlenose dolphins. Gray whales occasionally enter San Francisco Bay, and as in prior IHAs, we propose authorization for Level B harassment of 2 gray whales. Estimated Level B harassment take for California sea lions and harbor porpoises for this project has been based on densities of those stocks in the vicinity of the project. The estimated densities for these species have not changed from prior IHAs (0.16 and 0.17 animals per square kilometer, respectively). The only factors that have changed are the days of work for each pile type and the areas of the Level B harassment zones (see Tables 1 and 3 above, respectively).

Based on the above discussion, the only changes to the number of proposed takes, which are indicated below in Table 4, is to account for the increased occurrence of harbor seals and the area and days of work remaining to be completed.

TABLE 4—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Scientific name	Stock	Level B harassment	Percent of stock
Harbor seal .....	<i>Phoca vitulina</i> .....	California .....	8,532	1.6
Harbor porpoise .....	<i>Phocoena phocoena</i> .....	San Francisco—Russian River .....	327	4.4
California sea lion .....	<i>Zalophus californianus</i> .....	U.S .....	308	<0.1
Northern elephant seal .....	<i>Mirounga angustirostris</i> .....	California Breeding .....	12	<0.1
Gray whale .....	<i>Eschrichtius robustus</i> .....	Eastern North Pacific .....	2	<0.1
Northern fur seal .....	<i>Callorhinus ursinus</i> .....	California .....	10	<0.1
Bottlenose Dolphin .....	<i>Tursiops truncatus</i> .....	California Coastal .....	30	6.6

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the Federal Register notice announcing the

issuance of the 2020 IHA, except for the changes to the shutdown zones discussed above and shown in Table 5 and updated language we have developed for our typical measures. The location of the PSOs has changed eliminating some of the prior concerns

about visibility towards Castro Rocks as the work locations for the remaining work at berth 4 are off to the north side of the wharf. Because the mitigation measures have not increased, the discussion of the least practicable adverse impact included in the

**Federal Register** notice announcing the issuance of the 2019 IHA remains accurate. The following measures are proposed for this authorization:

- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant Chevron staff prior to the start of all pile driving activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood;

- Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions;

- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;

- Implement the shutdown zones indicated in Table 5;

- Employ PSOs and establish monitoring locations as described in the Marine Mammal Monitoring Plan and Section 5 of the IHA. For all pile driving locations two PSOs must be used, with a minimum of one PSO assigned to each active pile driving location to monitor the shutdown zones. During work at Berth 2, PSOs will be stationed on the east and west edges of the Long Wharf. The PSO on the east has 180 degree views from the Long Wharf, north, south and east toward the shore and would have views of Castro Rocks. The PSO on the west would have 180 degree views, north to south, with views of San Francisco Bay to the west. During work at Berth 4, one PSO would be stationed on the east side of the wharf, just south of Berth 4 on an elevated viewpoint. This position allows clear views of the work area and shutdown zones, and views of the waters to the east and west of Long Wharf. A second PSO would be stationed on the mooring dolphin at the north end of the Long Wharf. This location provides a view of the work area and shutdown zones from the north as well as a clear view of Castro Rocks and areas to the east and west;

- The placement of PSOs during all pile driving and removal and drilling activities will ensure that the entire

shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.*, fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;

- Monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made;

- If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal;

- Chevron must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;

- Use a bubble curtain during impact pile driving of 24-inch concrete piles and must ensure that it is operated as necessary to achieve optimal performance, and that no reduction in performance may be attributable to faulty deployment. At a minimum, the Holder must adhere to the following performance standards: The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact. Air flow to the bubblers must be balanced around the circumference of the pile;

- Conduct sound source level measurements during driving of a minimum of two 14-inch composite piles;

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

- PSOs must record all observations of marine mammals as described in the Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed;

- The marine mammal and acoustic monitoring reports must contain the informational elements described in the Monitoring Plan;

- A draft marine mammal monitoring report, and PSO datasheets and/or raw sighting data, must be submitted to NMFS within 90 calendar days after the completion of pile driving activities. If no comments are received from NMFS within 30 calendar days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 calendar days after receipt of comments; and

- In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) ([PR.ITP.MonitoringReports@noaa.gov](mailto:PR.ITP.MonitoringReports@noaa.gov)), NMFS and to West Coast Regional Stranding Coordinator as soon as feasible.

TABLE 5—SHUTDOWN ZONES BY MARINE MAMMAL HEARING GROUP, PILE SIZE, AND METHOD

Pile type	Radial distance of shutdown zone (meters)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Attenuated Impact Driving (with bubble curtain):					
24-inch square concrete .....	40	10	40	20	10
Vibratory Driving/Extraction:					
14-inch Composite .....	20	10	30	20	10
36-inch steel pipe pile .....	20	10	20	10	10
14-inch H pile .....	10	10	10	10	10
16-inch timber .....	10	10	10	10	10

**Preliminary Determinations**

The action in this IHA is identical to the action in the 2020 IHA except that sound isopleths have decreased for a number of sources, harbor seal daily rate of take has increased, and the mitigation and monitoring measures have been updated to our new language. As described in the notice of issuance of the 2020 final IHA (85 FR 37064, June 19, 2020) we found that Chevron’s construction activities would have a negligible impact and that the taking would be small relative to population size. For this analysis of the new IHA we found that marine mammal stock abundance was still estimated to be the same as for the 2020 IHA. Other marine mammal information and the potential effects were identical to the 2020 IHA except for the increase in the daily abundance of harbor seals. The estimated take was calculated identically to the 2020 IHA, except for harbor seals, and zone sizes decreased for a number of pile sizes. The increased daily abundance and take of harbor seals still involves far less than 10 percent of the stock (Table 4). Mitigation and monitoring are identical to the 2020 IHA except for the decrease in Level A harassment and shutdown zones for many pile types and the change in standard language, which has no substantive effect on our analysis.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the 2020 IHA. This includes consideration of the estimated abundance of harbor seals increasing, the change in harassment and shutdown zones, and the updating of IHA language for mitigation and monitoring.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined 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) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Chevron’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**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region, Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization 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.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Chevron for conducting the LWMEP in San Francisco Bay, CA from June 1, 2021 through May 31, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

**Request for Public Comments**

We request comment on our analyses (included in both this document and the

referenced documents supporting the prior IHAs), the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction activity at Long Wharf. We also request comment on the potential for renewal of this proposed 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.

On a case-by-case basis, NMFS may issue a 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 Specified Activities and Anticipated Impacts section of this notice is planned or (2) the activities as described in the Description of the Specified Activities 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: April 1, 2021.

**Catherine Marzin,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA948]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of New Jersey

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

**ACTION:** Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from Ocean Wind, LLC (Ocean Wind) for authorization to take marine mammals incidental to marine site characterization surveys off of New Jersey in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS-A 0498 and potential export cable routes to landfall locations in New Jersey. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and

agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than May 6, 2021.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to [ITP.Laws@noaa.gov](mailto:ITP.Laws@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. All comments received are a part of the public record and will generally be posted online at [www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act](http://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:** Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, 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 the 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 the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

#### 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 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 NMFS have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

NMFS 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.

#### Summary of Request

On December 11, 2020, NMFS received a request from Ocean Wind for an IHA to take marine mammals incidental to marine site characterization surveys off of New Jersey in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS-A 0498 (Lease Area) and potential export cable routes (ECRs) to landfall locations in New Jersey. Following NMFS review of the draft application, a revised version was submitted on February 23, 2021. That revised version was deemed adequate and complete on March 9, 2020. Ocean Wind’s request is for take