K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

For the reasons set forth in the preamble, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.712 paragraph (a)(1) in Table 1 to § 180.712 by adding the entries for ''Cotton, gin byproducts'', ''Cotton, undelinted seed'', ''Rapeseed subgroup 20A'', ''Wheat, forage'', ''Wheat, grain'', Wheat, hay'', and ''Wheat, straw'', in alphabetical order, to read as follows:

§ 180.712 Inpyrfluxam; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO § 180.712

Commodity	Parts per million
* * * * *	
Cotton, gin byproducts	0.02
Cotton, undelinted seed	0.01
* * * * *	
Rapeseed subgroup 20A	0.01
* * * * *	
Wheat, forage	0.01
Wheat, grain	0.01
Wheat, hay	1.5
Wheat, straw	0.3

* * * * *

[FR Doc. 2026–03423 Filed 2–19–26; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 260213–0047]

RIN 0648–BN57

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Hilcorp Alaska, LLC Oil and Gas Activities in Cook Inlet, Alaska

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

ACTION: Final rule; notification of issuance of Letter of Authorization (LOA).

SUMMARY: NMFS, upon request from Hilcorp Alaska, LLC (Hilcorp), issues this final rule pursuant to the Marine Mammal Protection Act (MMPA), to govern the taking of marine mammals incidental to specified activities conducted in support of oil and gas exploration, development, production, and decommissioning in Cook Inlet, Alaska, over the course of 5 years (2026–2031) and an associated letter of authorization (LOA). Together, the final rule and LOA allow for the incidental take of marine mammals during the described specified activities and timeframes, prescribes the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and establishes requirements pertaining to the monitoring and reporting of such taking.

DATES: This final rule and the LOA are effective February **20, 2026**, through February 19, 2031.

ADDRESSES: 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/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401.

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 promulgated and a LOA is issued or an incidental harassment authorization (IHA) is issued.

The statute also requires that authorization for incidental takings 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). If such findings are made, 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 set forth requirements pertaining to the monitoring and reporting of the takings. The definitions of applicable MMPA statutory terms are provided directly below or included in the relevant sections of this rule.

- *U.S. citizen*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13); 50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13);
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental (50 CFR 216.103);
- *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
- *Level B harassment*—any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3).

Purpose of Regulatory Action

NMFS received an application from Hilcorp requesting 5-year regulations and a LOA that would authorize the take of 12 marine mammal species, comprising 15 stocks, by Level B harassment, and take by Level A harassment of 9 of those 12 species, comprising 12 stocks, incidental to activities conducted by Hilcorp in support of oil and gas exploration, development, production, and decommissioning. No serious injury or mortality is anticipated or authorized.

The regulations provide a framework for authorizing the take of marine mammals incidental to specified activities associated with Hilcorp's oil and gas exploration, development, production, and decommissioning activities in Cook Inlet, Alaska. NMFS has, in accordance with the MMPA, issued the associated LOA.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs 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 for up to 5 years if, after notice and public comment, the agency makes certain findings and promulgates regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing 5-year regulations and the LOA.

Summary of Major Provisions Within the Rule

The major provisions of this rule are:

- Authorizing, through the issuance of the LOA, the take of small numbers of marine mammals by Level A harassment and/or Level B harassment incidental to Hilcorp's specified activities (no mortality or serious injury of any marine mammal is authorized);
- Requiring operating project vessels to maintain a distance of 2.4 km (1.5 miles) from the mean lower low water (MLLW) line of the Susitna Delta (MLLW line between the Little Susitna River and Beluga River) between April 15 and November 15 and restrict pile driving to November 15 through April 15 to avoid and minimize impacts when Cook Inlet beluga whales (CIBWs) are more likely engaging in foraging behavior;
- Requiring NMFS-approved protected species observers (PSOs) on board vessels associated with the specified activities and delaying commencement of or shutting down certain activities should a marine mammal be detected within identified clearance or shutdown zones to minimize the amount and severity of take;
- Requiring a soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to being exposed to higher noise levels; and
- Requiring submission of monitoring reports including, but not limited to, a summary of marine mammal species and behavioral observations, construction shutdowns or delays, and construction work completed.

Summary of Request

On October 30, 2024, NMFS received an application from Hilcorp requesting authorization to take marine mammals incidental to oil and gas exploration, development, production, and decommissioning activities in Cook Inlet, Alaska. Specifically, Hilcorp plans to conduct necessary work, including use of tugs towing, holding, or positioning a jack-up rig; pile driving; and pipeline replacement/installation activities. The exposure of marine mammals occurring in the vicinity to underwater noise generated by the activities could result in incidental take of marine mammals by Level A and/or Level B harassment. Therefore, Hilcorp requested authorization to incidentally take marine mammals. NMFS requested additional information from Hilcorp regarding their request on November 19, 2024, which Hilcorp provided on January 2, 2025. A final request from NMFS for information was sent to Hilcorp on January 22, 2025. Hilcorp provided all necessary information on February 10, 2025, and NMFS deemed Hilcorp's application, which includes a Marine Mammal Monitoring and Mitigation Plan in Appendix A, adequate and complete on February 18, 2025 (note that NMFS' Notice of Receipt (NOR) of Hilcorp's application erroneously described this date as being February 10, 2025). On March 13, 2025, NMFS published a NOR of Hilcorp's adequate and complete application in the **Federal Register** (90 FR 11951), requesting comments and soliciting information related to Hilcorp's request during a 30-day public comment period. NMFS did not receive any public comments. Subsequently, on March 14, 2025, Hilcorp submitted a revised application that corrected minor details but did not substantively modify the description of the specified activities or the type or amount of take requested incidental to those activities. This revised application is available at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llcs-oil-and-gas-activities-cook-inlet-alaska.*

On July 24, 2025, NMFS published a proposed rule in the **Federal Register** (90 FR 34974). The public comment period on the proposed rule was open for 30 days from July 24, 2025 through August 25, 2025. A summary of public comments received during this 30-day period are described in the Comments and Responses section of this final rule; full public comments may be viewed on *https://Regulations.gov.*

A history of previous incidental take authorizations that NMFS has issued to Hilcorp for identical or similar specified activities can be found in the proposed rule (90 FR at 34975). Hilcorp complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous LOAs and IHAs, and information regarding their monitoring results may be found in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed rule.

Description of Proposed Activity

Overview

Hilcorp plans to continue oil and gas exploration, development, production, and decommissioning activities in Cook Inlet, Alaska, for the reasonably foreseeable future. Over the course of the 5-year effective period of the regulations, this work includes up to 54 days of tugs towing, holding, or positioning a jack-up rig in support of production drilling at existing platforms in middle Cook Inlet and Trading Bay; up to 70 days of pile driving in support of production well development at the Tyonek Platform in middle Cook Inlet; up to 6 days of tugs towing, holding, or positioning a jack-up rig; up to 18 days of pile driving in support of exploration drilling at two locations in the Middle Ground Shoal Unit in middle Cook Inlet and one location between the Anna and Bruce platforms on the northern border of Trading Bay; and up to 22 days of pipeline replacement/installation, involving either pipe pulling or anchor handling or a combination of both, at up to two locations in middle Cook Inlet and/or Trading Bay. Hilcorp requested authorization of take by Level B harassment for 12 marine mammal species and additionally by Level A harassment for a subset of 9 of these species.

Dates and Duration

Table 1 provides a summary of the anticipated timings and durations for Hilcorp's planned activities; however, the schedule may shift such that actual activities occur in different years than specified below.

TABLE 1—SUMMARY OF HILCORP'S PLANNED ACTIVITIES

Project activity	Cook inlet region	Seasonal timing	Year(s) planned [1]	Anticipated duration of sound-producing activity	Anticipated sound sources
Tugs under Load with a Jack-Up Rig in support of Production Drilling.	Middle Cook Inlet	April–December	Years 1, 3, and 5 (2026 2028, 2030).	12 days (2 days each: 1 mobilization, 4 location-location moves, 1 demobilization, up to 12 total pinning events).	3 to 4 tugs towing, holding, and positioning a jack-up rig.
			Year 2 (2027)	10 days (2 days each: 1 mobilization, 3 location-location moves, 1 demobilization, up to 10 total pinning events).	
			Year 4 (2029)	8 days (2 days each: 1 mobilization, 2 location-location moves, 1 demobilization, up to 8 total pinning events).	
Pile Driving in Support of Production Well Development at the Tyonek Platform.	Middle Cook Inlet	Mid-November–Mid-April	Year 1–Year 5 (2026–2030).	14 days (7 days per pile (intermittent); 8 hour (hr) per day; 2 piles per year).	Impact pile driving.
Tugs under Load with a Jack-Up Rig and Pile Driving in Support of Exploratory Drilling [2].	Trading Bay (between Anna and Bruce platforms).	April—December	Year 2 (2027)	2 days tugs under load with a jack-up rig (1 location-location move, up to 2 total pinning events); 6 days intermittent pile driving (1 well, 1 pile each well).	Impact pile driving, 3 to 4 tugs towing, holding, and positioning a jack-up rig.
	Middle Cook Inlet (MGS Unit).	April–December	Year 4 (2029)	4 days tugs under load with a jack-up rig (2 location-location moves, up to 4 total pinning events); 12 days intermittent pile driving (2 wells, 1 pile each well).	Impact pile driving, 3 to 4 tugs towing, holding, and positioning a jack-up rig.
Pipeline Replacement/Installation [3].	Middle Cook Inlet/Trading Bay.	April—November	Year 2 (2027)	Scenario 1: 11 days using lay barge methods. Scenario 2: 22 days using lay barge methods (11 days per project, 2 projects).	Scenario 1: Anchor handling. Scenario 2: Anchor handling.
		April–November	Year 4 (2029)	Scenario 1: 8 days using pipe pull methods. Scenario 2: no pipeline replacement/installation.	Scenario 1: 2 tugs engaged in pipe pulling, bottom impact sounds of pipe connecting with seafloor. Scenario 2: none.

[1] The specific years activities that are planned to occur may or may not coincide with the actual year of execution.

[2] One exploratory well between Anna and Bruce is analyzed to occur in Year 2 and two exploratory wells in the Middle Ground Shoal Unit are analyzed to occur in Year 4; however, the exploratory wells may be developed in any separate years during the effective period of the LOA.

[3] Two pipeline scenarios are analyzed to occur: Scenario 1 comprises one project using lay barge methods in Year 2 and one project using pipe pull methods in Year 4; Scenario 2 comprises two projects using lay barge methods in Year 2 and no additional projects thereafter. A maximum of two pipeline projects will occur during the effective period of the LOA. Pipeline projects may occur simultaneously in any one year or in separate years during the effective period of the LOA. However, only lay barge methodology can be utilized in the same year (*i.e.,* Scenario 2).

Specified Geographical Region

Hilcorp's planned activities will occur in Cook Inlet, Alaska, which is the specified geographical region. Specifically, activities would occur in middle Cook Inlet and Trading Bay, Alaska (figure 1) from a point on the eastern shoreline approximately 12 km (7.5 mi) south of the East Foreland to a point approximately 16 km (10 mi) south of Point Possession on the west side, to the northernmost production platform in middle Cook Inlet (Tyonek, located in the North Cook Inlet Unit) to a point that is 3.5 km (2.2 mi) north of the village of Tyonek near the mouth of the Chuitna River. From there the area extends south to a point along the western shoreline approximately 15 km (9.3 mi) south of the West Foreland, and across the inlet back to a point on the eastern shoreline approximately 12 km (7.5 mi) south of the East Foreland. The geographic area of all activity covers a total of approximately 1,865 square kilometers (km^2) (460,850 acres) (within Cook Inlet in State of Alaska waters). For the purpose of this rule, middle Cook Inlet refers to waters north of the East and West Forelands and south of Threemile River in the west and Point Possession in the east, and Trading Bay refers to waters from approximately Granite Point in the north to the West Foreland in the south. Upper Cook Inlet refers to waters north and east of Beluga River in the west and Point Possession in the east.

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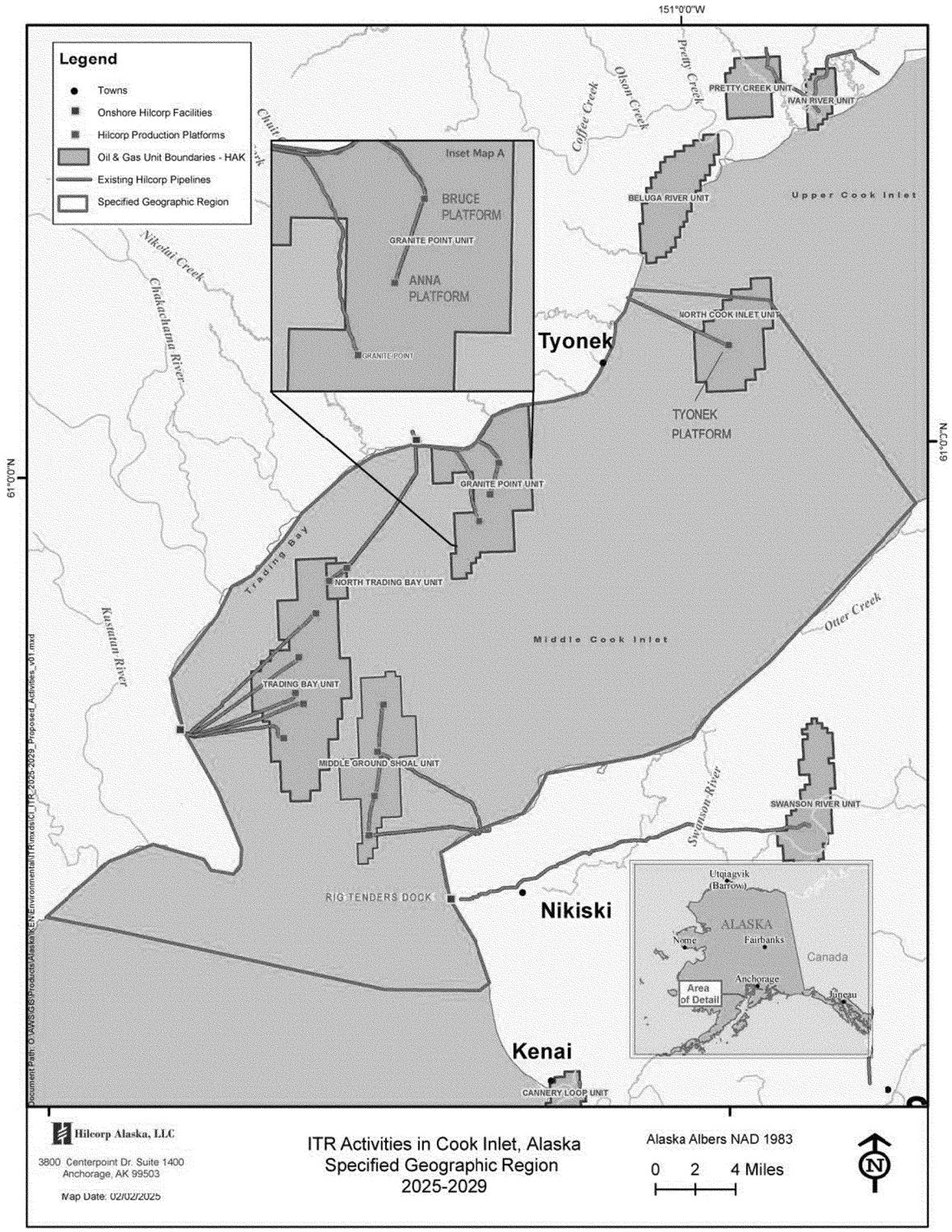

Figure 1 -- Hilcorp's Activity Location

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Detailed Description of the Specified Activity

A detailed description of Hilcorp's planned activities are provided in the proposed rule (90 FR at 34979–34984). Since publication of the proposed rule, Hilcorp has not made any modifications to their specified activities; therefore, we refer the reader to the proposed rule for a detailed description of the specified activities. Mitigation, monitoring, and reporting measures proposed by Hilcorp and included in this final rule are also described in detail in the proposed rule and summarized later in this document (please see Mitigation and Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Twelve species of marine mammals, comprising 15 stocks, may be taken by harassment incidental to Hilcorp's specified activities. A complete description of marine mammals status and trends, life history, habitat use, and threats is included in Hilcorp's application and NMFS' proposed rule (90 FR at 34984–34994). NMFS is not aware of any new relevant information since publication of the proposed rule. Please refer to the proposed rule for detailed descriptions of marine mammals in the project area.

TABLE 2—SPECIES WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name [1]	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenidae:						
Family Balaenopteridae (rorquals):						
Fin Whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	3,168 (0.26, 2,554, 2013) [5]	UND	0.6
Humpback Whale	*Megaptera novaeangliae*	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020)	127	27.09
		Mexico-North Pacific	T, D, Y	N/A [6] (N/A, N/A, 2006)	UND	0.57
		Western North Pacific	E, D, Y	1,084 (0.088, 1,007, 2006)	3.4	5.82
Minke Whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A [7] (N/A, N/A, N/A)	UND	0
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
		Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient.	-, -, N	587 (N/A, 587, 2012)	5.9	0.8
Pacific White-Sided Dolphin.	*Lagenorhynchus obliquidens*	North Pacific	-, -, N	26,880 (N/A, N/A, 1990)	UND	0
Family Monodontidae (white whales):						
Beluga Whale	*Delphinapterus leucas*	Cook Inlet	E, D, Y	331 (0.076, 311, 2022)	0.62	0
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	Alaska	-, -, N	UND [8] (UND, UND, 2015)	UND	37
Harbor Porpoise	*Phocoena*	Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Western	E, D, Y	49,837 [9] (N/A, 49,837, 2020)	299	267
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Cook Inlet/Shelikof Strait	-, -, N	28,411 (N/A, 26,907, 2018)	807	107

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] Endangered Species Act (ESA) status: endangered (E), threatened (T)/MMPA status: depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS' Stock Assessment Reports, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] The values presented here are based on the 2020 SAR and are an underestimate for the entire stock because it is based on surveys which covered only a small portion of the stock's range.

[6] Abundance estimates are currently considered unknown.

[7] Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers of minke whales in Alaska.

[8] The best available abundance estimate is likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range.

[9] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys.

Changes From Proposed to Final Rule

Since publication of the proposed rule, Hilcorp modified the CIBW density used to estimate take from pipeline replacement/installation using the lay barge method upon further investigation on where this activity may occur. They did so as lay barge methodology would be most appropriate for the deeper waters in middle Cook Inlet, rather than the shallower waters of Trading Bay. Hilcorp also adjusted the Tyonek Platform pile driving assumptions (specifically the strike rate) to mirror those for the exploratory well pile driving activities, which reduced the number of pile strikes from 24,000 to 2,786 strikes per day. Upon further investigation of the take estimate calculations, the ''proportion of the day activities would occur'' factor was changed from a partial day to 1 day (effectively removing it from the equation) for pile driving and stationary tugs engaged in holding or positioning a jack-up rig because the amount of work per day is already accounted for in the Level A harassment isopleth calculations and, for Level B harassment, there were not data available (*e.g.,* animals/hour) to develop such refined exposure estimates. A detailed description of all modifications are provided in the Estimated Take section of this final rule.

As a result of these changes, distances to Level A harassment thresholds for winter production impact pile driving at the Tyonek Platform decreased; calculated exposure estimates increased for certain activities (specifically, tug operations involving holding or positioning a jack-up rig and exploratory pile driving); and calculated exposure estimates associated with Tyonek well development activities decreased.

NMFS also modified language in the regulatory text (see §§ 217.164(g) and 217.165(h)) to clarify that ''[i]n this scenario'' refers to safety and pile refusal/instability concerns and ''any deviations from the vessel operation requirements'' refers to ''any instances where mitigation could not be implemented due to safety or pile instability/refusal concerns,'' respectively.

Comments and Responses

On July 24, 2025, NMFS published a proposed rule in the **Federal Register** for a 30-day public comment period. NMFS received 24 comment submissions in total; 21 from individuals and 3 letters from Defenders of Wildlife, the Alaska Department of Fish and Game (ADF&G), and a joint letter from Alaska Wildlife Alliance, Environmental Investigation Agency, Center for Biological Diversity, and Cook Inletkeeper. Summaries of all relevant, substantive comments and NMFS' responses to these comments are provided below. We have not responded to comments that failed to raise a significant point for us to consider (*e.g.,* comments that are out of scope of the proposed rule, such as funding scientific research). Furthermore, if a comment received was unclear, NMFS does not include it here as it could not determine whether it raised a significant point for NMFS to consider. All public comments are available for review on *https://www.regulations.gov.*

Comment 1: ADF&G supports issuance of the rule, concurring with NMFS's analyses and determinations in the proposed rule. ADF&G acknowledged the proposed rule includes numerous mitigation measures to avoid incidental serious injury or mortality to marine mammals, which it states helps ensure the conservation of marine mammal stocks. Lastly, ADF&G states that it does not consider ongoing or proposed oil and gas activities, with appropriate mitigation measures, to threaten the conservation or sustainability of marine mammals in Cook Inlet.

Response: NMFS appreciates ADF&G's comments. All mitigation measures that were discussed by ADF&G and contained within the proposed rule are included in this final rule.

Comment 2: A commenter recommended NMFS reconsider the Level B harassment zones considering recent information indicating beluga behavioral responses to vessels at a significantly greater distance (citing Martin *et al.,* 2023) than the commenter believes are reflected in the estimated Level B harassment distances presented in the proposed rule.

Response: The referenced literature, Martin *et al.,* 2023, documents the responses of nine satellite-tagged Eastern Beaufort Sea belugas to encounters with ships in the Beaufort, Chukchi, and Bering Seas from July through December 2018. The authors indicate that their findings corroborate previous studies that have shown behavioral responses of belugas to ships at distances far beyond visual range, implying belugas react to low-amplitude ship noise near ambient levels. The commenter recognizes in their letter that the belugas included in this study are not CIBWs but does not acknowledge that Cook Inlet is naturally a much louder environment than the seas where the referenced study was conducted. As described in the proposed rule, Cook Inlet is a particularly complex acoustic environment with strong currents, large tides, variable sea floor and generally changing conditions. Background noise levels in Cook Inlet where CIBWs are present often exceed 120 dB RMS (*e.g.,* Heenehan, 2009; Blackwell and Greene et al., 2003; URS, 2007; HDR, 2011). Therefore, NMFS does not consider Martin *et al.,* 2023 to be the best available scientific information for CIBW behavioral response to vessels and has not incorporated it into the Level B harassment zone calculation.

Comment 3: A commenter recommended that NMFS characterize baseline conditions for marine mammals in the project area (including a quantitative or qualitative assessment of the baseline acoustic environment for marine mammals in Cook Inlet or the project area), especially CIBWs, so that impacts from the 5 years of proposed activities can be considered together with existing noise and other stressors to determine whether the total impact is negligible. The commenter also recommended identifying spatial and temporal overlap among stressors and ensuring that impacts are minimized to the greatest extent possible.

Response: As discussed in the Negligible Impact Analysis and Determination section of the proposed rule and herein, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

The Description of Marine Mammals in the Area of Specified Activities section of the proposed rule thoroughly described the baseline conditions for marine mammals in the project area including past (*e.g.,* whaling) and ongoing (*e.g.,* noise, subsistence use for relevant species) stressors for all marine mammal species and stocks, discussed where these stressors are most prevalent (*e.g.,* ports, where subsistence hunting occurs, *etc.*), and described the status of the species and stocks. The Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the proposed rule described, based on the best available science, the anticipated effects of the specified activities on marine mammals, including a discussion about habituation and sensitization of marine

mammals to their environment and the importance of context when predicting impacts. The proposed rule also identified Cook Inlet as a particularly complex acoustic environment with strong currents, large tides, variable sea floor and generally changing conditions. As described above, background noise levels in Cook Inlet where CIBWs are present often exceed 120 dB (*e.g.,* Heenehan, 2009; Blackwell and Greene *et al.,* 2003; URS 2007; HDR 2011).

Between 1994 and 1998, the CIBW stock declined by approximately 50 percent due largely to unsustainable subsistence harvesting. Since their listing as endangered under the ESA in October 2008, there have been 95 confirmed dead stranded Cook Inlet beluga (NMFS, 2002). Live stranding effects were the leading cause of death (23 percent, n=9) among belugas necropsied between 1998 and 2013 (n=38), though 29 percent (n=11) had an unknown cause of death (Burek-Huntington *et al.,* 2015). Burek-Huntington *et al.* (2015) also noted that disease may have contributed to the cause of death in some events. Other causes of death included trauma, malnutrition, and perinatal mortality (fetus or neonatal calf mortality of unspecified cause). NMFS recognizes that the CIBW population has not recovered from subsistence harvest and that noise, among many other stressors such as disease, contaminants, and natural live strandings, could be a contributing factor to recovery. However, in the Negligible Impact Analysis and Determination section of the proposed rule and this final rule, NMFS describes the various factors considered in our determination that the specified activities, in combination with Hilcorp's proposed mitigation measures, would not appreciably contribute to existing noise stressors such that they would affect the population through effects to recruitment or survival. The commenter did not provide scientific information that suggests noise impacts from the specified activities would have more than a negligible impact on marine mammals.

Comment 4: A commenter asserted that 70 ''days of disturbance'' from pile driving would occur over 5 years, as described in the expert elicitation (EE) referenced in the proposed rule, and this would be sufficient to cause potential population-level impact through decreased foraging success. The commenter recommended that NMFS aggregate the potential days of disturbance attributable to each proposed activity, in addition to baseline noise conditions, to support its negligible impact determination.

Response: NMFS disagrees that exposure to pile driving noise would cause potential population-level impacts through decreased foraging success. The best available science supports the analysis that exposure to pile driving noise would result in temporary behavioral disturbance that would not have population-level effects. As described in the proposed rule, extensive monitoring at the Port of Alaska, which is located north of the project area in Knik Arm and where pile driving has been ongoing for several years, supports this analysis. Observations during Port of Alaska pile driving demonstrate that CIBWs may or may not respond behaviorally and that any observed responses (*e.g.,* faster swim speeds, tight group formations) are mild and that CIBWs continue to transverse Knik Arm. Further, the population has not declined despite extensive pile driving occurring. In fact, from 2016 to 2022, when pile driving at the Port of Alaska has been concentrated, the CIBW population has slightly increased (Young *et al.,* 2025).

As described in the proposed rule, the EE considered that a ''day of disturbance,'' in the context of the report, is notably more severe (*e.g.,* energy reserves of a pregnant CIBW would be reduced to such a level that she is certain to terminate the pregnancy or abandon the calf soon after birth) than any Level B harassment expected to result from these activities, which as described is expected to be comprised predominantly of temporary modifications in the behavior of individual CIBWs. As such, NMFS disagrees with the commenter that NMFS should aggregate days of disturbance as the predicted outcomes of authorizing take do not rise to the level described in the EE. The proposed rule summarized relevant literature and monitoring reports related to potential impacts of pile driving on CIBWs (*e.g.,* POA 2021, 2022) and concluded that temporary behavioral modifications (*e.g.,* increased swimming swims, minor avoidance) are the likely outcome of exposure.

Comment 5: A commenter indicated that data in Hilcorp's previous monitoring reports do not support the following statement in the proposed rule: ''monitoring data from Hilcorp's activities suggest that the presence of pile driving or tugs under load do not discourage CIBWs from transiting throughout Cook Inlet and between critical habitat areas and that the whales do not abandon critical habitat areas (*e.g.,* Horsley and Larson, 2023, 2024).'' The commenter asserted that little inference regarding the impacts of tugs under load on belugas use of, or transit to and from, critical habitat areas can be made from this data and pointed out that example monitoring reports provided consisted entirely of transporting jack-up rigs as opposed to pile driving.

Response: NMFS acknowledges that the proposed rule inadvertently omitted citations to the Port of Alaska's monitoring reports, which thoroughly document responses of CIBWs to pile driving activities, in the example list. However, in other parts of the proposed rule, NMFS summarized findings from these reports, including the results of extensive, multi-year monitoring in Knik Arm, which contains an important foraging area for CIBWs. These reports clearly demonstrate that CIBWs may or may not exhibit behavioral response to pile driving; when behavioral responses were observed, those responses were as expected (*e.g.,* faster swim speeds, more cohesive group formation, *etc.*). CIBWs are also frequently observed around the Port of Alaska and other smaller ports when vessels are operating. NMFS is unaware of data suggesting CIBWs do not utilize areas where vessel use or other activities similar to those used by Hilcorp occur. Nor is NMFS aware of data indicating that such anthropogenic activity prevents CIBWs from transiting throughout Cook Inlet and between critical habitat areas, or that CIBWs have abandoned critical habitat areas due to exposure to these sources. The commenter did not provide additional scientific information for NMFS to consider.

Comment 6: A commenter claimed that the negligible impact analysis in the proposed rule failed to recognize that noise and other stressors can cause significant disruptions to behaviors, including interrupting, deferring, and ultimately reducing the use of preferred areas for critical life functions.

Response: NMFS disagrees that the proposed rule did not thoroughly describe the potential impacts of noise exposure on marine mammals, including CIBWs. A full explanation of the potential effects of noise on marine mammal using the best available science was included in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section of the proposed rule (90 FR at 34994–35005). In the Negligible Impact Analysis and Determination section of the proposed rule (90 FR at 35022–35026), NMFS thoroughly described, using the best available science, why the taking proposed to be authorized incidental to Hilcorp's specified activities would not affect marine mammal populations (including CIBWs)

through effects on annual rates of recruitment or survival. The proposed rule also explained that while Hilcorp's activities would occur within critical habitat, they would occur intermittently or, for pile driving, when CIBWs are not concentrated in the project area. Science supporting the preliminary determinations in the proposed rule and determinations in this final rule include extensive monitoring of activities identical to those proposed by Hilcorp (*e.g.,* tug use by Hilcorp, pile driving at the Port of Alaska). Overall, NMFS has found, supported by the best available science, that the taking authorized from the specified activities will have a negligible impact on marine mammals, including CIBWs. The commenter did not provide additional scientific information that supports that the taking authorized would have more than a negligible impact on marine mammals.

Comment 7: A commenter recommended that NMFS deny issuing the authorization on the basis that NMFS does not take a precautionary approach and issuing an LOA risks significant harm to the species and fails to uphold the objectives of the MMPA and ESA. Specifically, noting recommendations made outside of this specific rulemaking such as Recovery Action #62 of the CIBW Recovery Plan, the commenter stated that a truly precautionary approach would postpone the granting of any incidental take until (1) there is stronger evidence from more consistent annual survey effort of sustained population growth over multiple years, and not potentially unreliable shifts in survey methodologies; (2) cumulative impacts, including from noise, vessel traffic, and industrial disturbance, have been robustly assessed and mitigated, and (3) NMFS and associated partners have fully considered expert, independent recommendations emphasizing conservation first.

Response: NMFS has made, based on the best available science, the findings required to promulgate this final rule. The commenter's recommendations are not based on the applicable statute (*see* 16 U.S.C. 1371(a)(5)(A)(i) (''[T]he Secretary shall allow . . . the incidental, but not intentional, taking . . . if the Secretary . . . finds that the total of such taking . . . will have a negligible impact on such species or stock and will not have an unmitigable adverse impact of the availability of such species or stock for taking for subsistence uses . . . .''). Further, the Biological Opinion associated with this action concluded that Hilcorp's activities would not jeopardize the continued existence of ESA-listed species, including CIBWs, or adversely modify critical habitat.

With respect to Recovery Action 62 (NMFS, 2016), the recommended action was to review the current system for allocation of takes by harassment to determine if a comprehensive approach increases managers' ability to reduce cumulative effects. This recovery action applies to both incidental and intentional (*i.e.,* research) takes. Castellotte *et al.* (2018) also recommended a new approach to authorizing CIBW takes; however, this approach is inconsistent with Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)). Here, we appropriately made the findings required under the MMPA and have promulgated the requested regulations and issued the LOA. As described in the response to comment 10, NMFS incorporates past and ongoing actions into the baseline status of marine mammal species and stocks when considering if the authorized take would have a negligible impact on the affected species and stocks or have unmitigable adverse impacts on the availability of species for subsistence use.

Comment 8: A commenter asserted that NMFS's reliance on arbitrary numerical thresholds to justify ''small take'' or ''negligible impact'' fails to account for the precarious conservation status of CIBWs. The commenter stated that the ''logic that any disturbance under a certain percentage is acceptable does not hold when the baseline is an endangered population on the brink of extinction.''

Response: NMFS disagrees, and the commenter did not provide additional information for NMFS to consider to support this claim. Legislative history shows that Congress recognized ''the imprecision of the term 'small numbers,' but was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits.'' H.R. Rep. No. 97–228, at 19 (1981), as reprinted in 1981 U.S.C.C.A.N. 1458, 1469. In 2021, NMFS adopted a ''proportional approach,'' whereby it ''compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species'' to determine whether the authorized take is limited to ''small numbers'' of that species (*see, e.g.,* ''Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico,'' (86 FR 5322, Jan. 19, 2021)); *see also* 90 FR 31756 (Jul. 15, 2025) (applied to incidental take during construction activities); 86 FR 27991 (May 25, 2021) (scientific research activities), and 85 FR 40250 (Jul. 6, 2020) (renewable energy activities).

Federal courts have upheld this proportional approach, which is used by both NMFS and U.S. Fish and Wildlife Service for all incidental take authorizations issued under the MMPA (*see, e.g., Center for Biological Diversity* v. *Salazar,* 694 F.3d 893, 906–907 (9th Cir. 2012)). NMFS has defended the approach successfully in court where the issue has been raised in litigation for various authorizations (*see Melone* v. *Coit,* 100 F.4th 21, 30–32 (1st Cir. 2024) (upholding NMFS application of the proportional approach); *Save Long Beach Island* v. *U.S. Dep't of Commerce,* 2025 WL 1829543, at *26 (upholding NMFS application of the proportional approach); *see also Native Village of Chickaloon* v. *NMFS,* 947 F. Supp. 2d 1031, 1052–1053 (D. Ak) (upholding NMFS finding that the non-lethal take of 30 beluga whales during seismic surveys in Cook Inlet, Alaska, which amounted to 10 percent of the total whale population, constitutes a small number)). As described in the proposed rule and this final rule, NMFS has made the required small numbers determination consistent with this approach. The number of takes authorized is a component of a negligible impact analysis (*see Nat. Res. Def. Council, Inc.* v. *Evans,* 279 F. Supp. 2d 1129, 1153 (N.D. Cal. 2003), and we refer to Negligible Impact Analysis and Determination sections of the proposed rule and herein for the complete analysis.

Comment 9: A commenter took issue with NMFS' use of standard rounding, (*i.e.,* rounding down when an estimated value is less than 0.5). The commenter claimed that the number of takes proposed to be authorized is an underestimate because, when adding all the fractional parts of the estimated harassment events identified in table 18 of the proposed rule over the 5-year period, it totals 97.959 exposures (0.104 Level A and 97.855 Level B) and the proposed rule only proposed to authorize 94 Level B harassment takes. The commenter also stated that NMFS assumes that anthropogenic noise in the Level B harassment zone will deter whales from entering the Level A harassment zone, thus reducing the likely number of takes by Level A harassment, and states that this assumption is ''under-protective of the whales.''

Response: NMFS disagrees that takes were rounded down. Where total exposures for each activity exceeded a whole integer (*e.g.,* 5.2 exposures), exposures were rounded up. That is, exposure estimates were rounded up for

each activity before summing (*e.g.,* if the exposure estimate for pile driving at Tyonek platform was 27.3, the agency rounded up to 28 before adding across all activities). As identified in the Estimated Take section of this final rule (table 4), the total number of beluga whale takes were adjusted from 94 across 5 years in the proposed rule to 147 in this final rule. The sum of exposure estimates across all activities for scenario 1 equals 143.6. However, after rounding for each activity before summing exposure estimates, the total equals the 147 takes requested and which NMFS has authorized. NMFS further notes the sum of exposure estimates across all activities for scenario 2 equals 134.1; therefore, the authorized number of takes is conservative.

Level A harassment exposures of CIBWs were calculated (0.013 animals/per maximum); however, Hilcorp did not request, and NMFS has not authorized, take by Level A harassment for this species. As described in the Estimated Take section below, the Level A harassment exposure estimates consider a distance to the Level A harassment threshold that represents the distance at which an animal would have to remain for the duration of activity occurring within 24 hours and do not consider mitigation measures (*e.g.,* seasonal pile driving restrictions at the Tyonek Platform, clearance and shutdown) which further reduces the likelihood of a CIBW accruing enough noise energy to meet the onset of AUD INJ threshold. For these reasons, Hilcorp did not request and NMFS agrees that that authorizing take of CIBWs by Level A harassment is unlikely and is not authorized.

Comment 10: A commenter asserted that NMFS failed to adequately consider cumulative effects to CIBW.

Response: MMPA section 101(a)(5)(A) and (D) requires NMFS to authorize the requested incidental take of small numbers of marine mammals of a species or stock by U.S. citizens if it finds the total take ''while engaging in that [specified] activity'' within a specified geographical region will have a negligible impact on such species or stock and, where applicable, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses (16 U.S.C. 1371(a)(5)(A)). Negligible impact is defined as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effect on annual rates of recruitment or survival'' (50 CFR 216.103). Consistent with the preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is considered in the negligible impact analysis. Federal courts have repeatedly upheld NMFS's approach. *See Melone* v. *Coit,* 100 F.4th 21, 33 (1st. Cir. 2024) (upholding NMFS' approach); *Save Long Beach Island* v. *U.S. Dep't of Commerce,* 794 F.Supp.3d 273, 325–327 (D.N.J. 2025) (same).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Hilcorp's oil and gas exploration, development, production, and decommissioning activities have the potential to result in harassment of marine mammals in Cook Inlet, Alaska. We refer the reader to the proposed rule (90 FR 34974 at 34994–35005) for a full discussion of the effects of anthropogenic noise on marine mammals in general and the potential effects of the specified activities on marine mammals and their habitat. There is no newly available relevant information that would change our analyses or the results thereof.

Estimated Take of Marine Mammals

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment) or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* pile driving and tugging activities, including those planned for anchor handling, pipe-pulling, and jack-up rig moves) have the potential to result in disruption of behavioral patterns for individual marine mammals. We note here that given the slow, predictable, and generally straight path (or stationary nature) of tugs towing, holding, and positioning the jack-up rig or engaged in anchor handling or pipe pulling activities, the likelihood of disrupting marine mammal behavioral patterns from tug use that would qualify as harassment under the MMPA is considered relatively low. However, at the request of the applicant, we have quantified the potential exposures from this activity to our generalized harassment thresholds, assumed that these exposures would equate to take, and analyzed the impacts of the assumed takes.

The likelihood of Auditory Injury (AUD INJ) is also considered relatively low for all species given that to experience Level A harassment, an animal would have to remain at the calculated distance from an activity for its total duration in a given day, which Hilcorp assumes would be up to 8 hours for pile driving or 2 or more hours for anchor handling associated with lay barge pipeline installation or replacement. Required clearance and shutdown zones also encompass conservative Level A harassment distances. Regardless, with the exception of CIBWs, Hilcorp requested, and NMFS has authorized, Level A harassment of 9 species of marine mammals wherein this scenario occurs (*e.g.,* pile driving at the exploratory wells) and the calculated exposure estimates are greater than zero despite the very low risk of AUD INJ occurring (see table 4). For all species, the exposure estimate calculations do not reflect consideration of mitigation measures (*e.g.,* clearance and shutdown), which further reduce the likelihood of an animal incurring AUD INJ, or potential avoidance behavior in response to noise exposure (*e.g.,* Southall *et al.,* 2021). For CIBWs, the maximum annual exposure estimate is greater than zero (0.013). However, Hilcorp proposed, and NMFS is requiring, enhanced, species-specific mitigation measures (*i.e.,* seasonal restrictions to winter pile driving at the Tyonek Platform, which reduces the likelihood animals would persist in the area of pile driving as this activity would occur outside key foraging time periods, as well as delaying the commencement of anchor handling if a CIBW is observed at any distance). For all these reasons, Hilcorp did not request, and NMFS has not authorized, Level A harassment of CIBWs. The required mitigation and monitoring measures are expected to minimize the potential for take and, if take were to occur, the severity of the taking to the extent practicable. As described previously, no serious injury or mortality is anticipated or authorized for any species, and Level A harassment of CIBW is not anticipated due to inherently low probability of AUD INJ occurring and enhanced, species-specific mitigation.

NMFS refers the reader to the Estimated Take of Marine Mammals

section of the proposed rule (*see* 90 FR at 35005–35017). Except for the numerical changes described herein, this analysis remains valid and is not repeated here. Since publication of the proposed rule, Hilcorp made adjustments to assumptions used in the modeling and the exposure estimate methodology to prevent redundant accounting of the duration component of project activities and to provide greater clarity regarding the details of pile driving operations. Specifically, Hilcorp made the following modifications, and NMFS agrees these are appropriate to carry forward in this analysis:

- For lay barge pipeline replacement and installation activities, beluga whale density estimates specific to middle Cook Inlet were utilized in the exposure estimate equations to reflect the potential for these operations to occur at any platform within the region (note pipe pull operation exposure estimates continued to be calculated using the Trading Bay density values, as these activities are most likely to be conducted from the western shoreline of Cook Inlet). As such, the density was changed from the Goetz modeled density in Trading Bay of 0.01505, which represents densities in shallow waters (*see* 90 FR at 35013), to the MML middle Cook Inlet density of 0.00658, which represents densities in deeper waters where lay barge pipeline replacement and installation activities would occur. NMFS notes that both densities were identified in table 17 of the proposed rule. All other densities remain the same as in the proposed rule.
- Impact pile driving strike rate at the Tyonek Platform was made identical to that estimated for exploratory well pile driving (65 strikes per foot), which decreased the number of strikes estimated to install a pile from 24,000 strikes per pile (*see* 90 FR at 35006) to 19,500 strikes per pile (which is a factor in the Level A harassment distance calculation). Hilcorp maintains that 7 days are needed to install each pile; therefore, approximately 2,786 strikes per day (19,500 strikes/7 days) would occur at the Tyonek Platform. NMFS notes that the Level A harassment distances in Hilcorp's application and the proposed rule assumed all 24,000 strikes occurred on one day; therefore, the distance to the Level A harassment thresholds were overestimated. Making these adjustments reduced calculated distances to Level A harassment isopleths (table 3).
- For pile driving and stationary tugs engaged in holding or positioning a jack-up rig, the ''proportion of the day activities would occur'' factor was changed from a partial day (*see* 90 FR at 35013) to 1 day (effectively removing it from the equation) because the amount of work per day is already accounted for in the Level A harassment isopleth calculations and, for Level B harassment, there were not data available (*e.g.,* animals/hour) to develop such refined exposure estimates.

As a result of these modifications, distances to Level A harassment thresholds for winter production impact pile driving at the Tyonek Platform decreased; calculated exposure estimates increased for certain activities (specifically, tug operations involving holding or positioning a jack-up rig and exploratory pile driving); and calculated exposure estimates associated with Tyonek well development activities decreased. Specifically, the updated exposure estimates resulted in an annual increase to estimated Level B harassment for several species: humpback whales (+2), beluga whales (+7), harbor porpoises (+1), harbor seals (+302), and Steller sea lions (+8). Conversely, estimated Level A harassment decreased for harbor porpoises (from 4 to 1) and harbor seals (from 43 to 15). Table 4 presents a side-by-side comparison of the annual take estimates in the proposed rule versus those estimated and allowed for in this final rule and authorized in the LOA. Table 5 compares the aggregated take authorization requests over the 5-year period. Analysis pertaining to pipeline replacement and/or installation activities remained unchanged, as these did not warrant methodological refinement.

Table 3 contains updated distances to thresholds and corresponding areas for pile driving activities. Table 4 provides updated annual exposure estimates across all activities and maximum amount of annual take to be authorized in an LOA, if issued. Table 5 includes updated maximum amount of take authorized in the LOA, across all 5 years.

TABLE 3—COMPARISON OF CALCULATED DISTANCES AND AREAS TO THE ESTIMATED LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR PILE DRIVING ACTIVITIES BETWEEN PROPOSED AND FINAL RULE

Activity	Level A harassment (SEL) distance (m)/area (km^2)					Level B harassment distance (m)/area (km^2)
	LF	HF	VHF	PW	OW	
	Proposed Rule					
Winter production impact pile driving (Tyonek Platform)	3,295.85/34.13	420.51/0.56	5,100.30/81.72	2,927.89/26.93	1,091.31/3.74	1,000.00/3.14
	Final Rule [1]					
	784.24/1.93	100.06/0.03	1,213.61/4.63	696.69/1.52	259.70/0.21	
Exploratory impact pile driving [2] ..	1,041.78/3.41	132.92/0.06	1,612.16/8.17	925.48/2.69	344.98/0.37	1,000.00/3.14

[1] Hilcorp originally assumed that, for impact driving at the Tyonek Platform, each pile would require 24,500 strikes to install. While they acknowledged that a pile could take 7 days to install, their Level A harassment distance calculations assumed all 24,500 strikes would occur in a single day. Hilcorp subsequently determined that the strike rate for exploratory impact pile driving was a better approximation and has carried over those assumptions to pile driving at the Tyonek Platform (65 strikes per foot by 300 ft (91 m) divided by a total of 7 days to complete each pile, for a total of 2,786 strikes per day). These calculation changes decrease and more accurately reflect the potential distances to Level A harassment thresholds for all hearing groups.

[2] There is no change between proposed and final rule for exploratory well impact pile driving calculations.

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Table 4 -- Comparison of Calculated Maximum Annual Exposure Estimates and Annual Take, by Level A and Level B Harassment, Authorized as a Percentage of Species, Stock, and Stock Abundance

Species	Stock	Annual Level A Harassment				Annual Level B Harassment				Maximum Annual Take (Level A + Level B)		Percentage of the Population
		Exposure Estimate		Take Authorized		Exposure Estimate		Take Authorized				
		Proposed	Final[1]	Proposed	Final[1]	Proposed	Final[2]	Proposed	Final[2]	Proposed	Final	
Humpback whale	Mexico N. Pacific	0.370	0.125	1	1	5.006	7.278	6	8	7	9	<1.1
	W. N. Pacific											
	Hawaii											
Minke whale	Alaska	0.006	0.02	1	1	0.076	0.111	3	3	4	4	<1.0
Gray whale	Eastern Pacific	0.013	0.005	1	1	0.180	0.262	5	5	6	6	<1.0
Fin whale[3]	Northeastern Pacific	0.055	0.019	1	1	0.748	1.088	3	3	4	4	<1.0
Killer whale[3]	Alaska Resident	0.002	0.001	1	1	1.659	2.412	10	10	11	11	1.8
	Alaska Transient											<1.0
Beluga whale	Cook Inlet	0.032	0.013	0	0	26.565	33.453	27	34	27	34	10.2
Dall's porpoise[3]	Alaska	0.066	0.022	1	1	0.371	0.539	10	10	11	11	<1.0

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Harbor porpoise	Gulf of Alaska	1.821	0.618	4	1	10.29	14.970	11	15	15	16	<1.0
Pacific white-sided dolphin[4]	North Pacific	0	0	0	0	0	0	3	3	3	3	<1.0
Harbor seal	Cook Inlet/Shelikot	42.366	14.385	43	15	727.166	1,057.12	728	1,058	771	1,073	3.8
Steller sea lion	Western	0.147	0.050	1	1	18.142	26.374	19	27	20	28	<1.0
California sea lion[4]	U.S.	0	0	0	0	0	0	2	2	2	2	<1.0

[1] Level A harassment exposure estimates decreased for all species primarily due to the reduction in the number of impact hammer strikes per day needed to install piles at the Tyonek Platform. However, the amount of Level A harassment takes requested and authorized did not decrease for all species as the change to the exposure estimate did not warrant a decrease.

[2] Exposure estimates for Level B harassment increased from the proposed rule, primarily due to the removal of the "proportion of the day" factor that was included in the proposed rule exposure estimates. However, for eight species, this change did not affect the estimated number of take as the new estimates remained less than anticipated based on previous monitoring data. For five species, the number of estimated Level B harassment allowed for in this final rule and authorized in the LOA increased slightly.

[3] Signifies species for which group behavior influenced the amount of Level B harassment to be authorized.

[4] Signifies species for which Level B harassment was based on the number of individuals sighting during past project monitoring as exposures were not modeled due to lack of density data.

TABLE 5—COMPARISON OF CALCULATED MAXIMUM EXPOSURE ESTIMATES AND TAKE, BY LEVEL A AND LEVEL B HARASSMENT, AUTHORIZED OVER 5 YEARS

Species	Stock	Total 5-year level A take		Total 5-year level B take	
		Proposed	Final	Proposed	Final
Humpback whale	Mexico N Pacific W. N. Pacific. Hawaii.	5	5	30	33
Minke whale	Alaska	5	5	15	15
Gray whale	Eastern Pacific	5	5	25	25
Fin whale [1]	Northeastern Pacific	5	5	15	15
Killer whale [1]	Alaska Resident Alaska Transient.	5	5	50	50
Beluga whale	Cook Inlet	0	0	94	147
Dall's porpoise [1]	Alaska	5	5	50	50
Harbor porpoise	Gulf of Alaska	10	5	44	65
Pacific white-sided dolphin [2]	North Pacific	0	0	15	15
Harbor seal	Cook Inlet/Shelikof	184	44	2,884	4,516
Stellar sea lion	Western	5	5	74	114
California sea lion [2]	U.S	0	0	10	10

[1] Signifies species for which group behaviors influenced the amount of Level B harassment to be authorized.
[2] Signifies species for which Level B harassment was based on the number of individuals sighting during past project as monitoring exposures were not modeled due to lack of density data.

Mitigation

If the required findings are made, the MMPA requires NMFS to prescribe regulations setting forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (referred to as mitigation). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to effect the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This analysis considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

For a full discussion of NMFS' implementation of the least practicable adverse impact standard, see 89 FR at 31517–31518.

The mitigation requirements in this final rule were proposed by Hilcorp in its adequate and complete application or are the result of subsequent coordination between NMFS and Hilcorp. Hilcorp has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the measures are appropriate. NMFS refers the reader to the Proposed Mitigation section of the proposed rule (*see* 90 FR at 35017–35021). These measures remain valid and are not repeated here. In summary, the mitigation measures in this final rule include seasonal pile driving restrictions at the Tyonek Platform, use of clearance and shutdown zones (table 6), use of favorable tides to reduce vessel noise, and implementation of vessel strike avoidance measures. Hilcorp is required to utilize NMFS-approved PSOs during all activities that have the potential to result in take of marine mammals.

TABLE 6—CLEARANCE AND SHUTDOWN ZONES BY ACTIVITY

Activity	Species or hearing group	Clearance zone (m)	Shutdown zone (m)
Production and Exploratory Drilling			
Tugs Towing, Holding, or Positioning a Jack-Up Rig [1].	CIBWs	Any distance	N/A
	Non-CIBWs	1,500	N/A
Production Well Development at the Tyonek Platform			
Winter Pile Driving	All Marine Mammal Species	500	500

TABLE 6—CLEARANCE AND SHUTDOWN ZONES BY ACTIVITY—Continued

Activity	Species or hearing group	Clearance zone (m)	Shutdown zone (m)
Exploratory Drilling: MGS Unit and Between Anna and Bruce			
Exploratory Pile Driving	VHF Cetaceans	1,650	1,650
	LF Cetaceans, HF Cetaceans, Phocids, Otariids ..	1,200	1,200
Pipeline Replacement or Installation			
Anchor Handling [1]	CIBWs	Any distance	N/A
	Non-CIBWs	1,500	N/A
Pipe Pulling [1]	CIBWs	Any distance	N/A
	Non-CIBWs	1,500	N/A

[1] This activity cannot shut down once started and therefore has no associated shutdown zone.

Based on our evaluation of the measures proposed by Hilcorp and included in the regulations, NMFS has determined that the required mitigation provide the means of effecting the least practicable 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 stock for subsistence uses.

Monitoring and Reporting

In order to issue take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to both compliance and ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic) through better understanding of (1) action or environment (*e.g.,* source characterization, propagation, ambient noise), (2) affected species (*e.g.,* life history, dive patterns), (3) co-occurrence of marine mammal species with the activity, or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either (1) long-term fitness and survival of individual marine mammals or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The monitoring and reporting requirements included in this final rule were proposed by Hilcorp in its adequate and complete application or are the result of subsequent coordination between NMFS and Hilcorp. Hilcorp has agreed to the requirements in the regulations, which include the measures described in the Proposed Monitoring and Reporting section of the proposed rule (*see* 90 FR at 35021–35022). These measures remain valid and are not repeated here. In summary, Hilcorp will utilize PSOs at least 30 minutes prior to, during, and 30 minutes after all activities that may result in take of marine mammals using appropriate equipment. The minimum number of PSOs, watch position, and locations are provided in table 7. Hilcorp will also provide situational and regularly scheduled reports.

TABLE 7—PSO STATIONS AND LOCATIONS PER ACTIVITY

Activity	Number of PSOs	On-watch count and position	PSO location(s)
Tugs Towing, Holding, or Positioning a Jack-Up Rig.	4	2 on watch (1 port, 1 starboard)	Jack-Up Rig.
Tugs Towing, Holding, or Positioning a Jack-Up Rig at Tyonek Platform.	6–8	2 on watch (1 port, 1 starboard)	Jack-Up Rig.
		1 on watch	Tyonek Platform.
Winter Season Pile Driving for Production Well Development.	4–6	2 on watch (1 port, 1 starboard)	Tyonek Platform.
Pile Driving for Exploratory Drilling	4	2 on watch (1 port, 1 starboard)	Drilling Rig.
Anchor Handling	2–3	1 on watch	Anchor Handling Vessel.
Pipe Pulling	4–6	1 on watch [1]	Pipe Pulling Vessel.
		2 on watch (1 port, 1 starboard)	Nearest Platform.

[1] The placement of additional PSOs on the pipe pull vessel and platform were evaluated by Hilcorp and determined to be impractical due to the necessity of another vessel to accommodate the extra PSOs.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As described in the proposed rule, there are several key factors to assess whether potential impacts associated with a specified activity should be considered negligible. These include, but are not limited to, the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the individuals, and the status of the species or stock.

As described in the Changes from Proposed to Final Rule section and Estimated Take section of this final rule, Hilcorp identified and NMFS incorporated minor adjustments to the estimated take assumptions and methodology for select activities that resulted in a small decrease of Level A harassment for harbor porpoise and harbor seals and an overall small increase in the number of Level B harassment takes for humpback whales, beluga whales, harbor porpoise, harbor seals, and Steller sea lions. However, these limited changes do not affect the analyses in the Negligible Impact Analysis and Determination section of the proposed rule.

NMFS refers the reader to the general discussion in the Negligible Impact Analysis and Determination section of the proposed rule (*see* 90 FR at 35022–35025). This analysis remains valid and is not repeated here. In summary, the following factors support our determinations that the impacts resulting from Hilcorp's activities are not expected to affect any individual marine mammal's fitness for survival or reproduction and thus are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No takes by mortality or serious injury are anticipated or authorized;
- Level A harassment is expected to be of a low degree and would not impact the fitness of any animals;
- The intensity of anticipated takes by Level B harassment is low for all stocks consisting of, at worst, temporary modifications in behavior and would not be of a duration or intensity expected to result in impacts on reproduction or survival;
- Exposure and resulting impacts would likely be brief given the short duration of the specified activity and the transiting behavior of marine mammals in the action area;
- Marine mammal densities are low where and when Hilcorp would conduct activities; therefore, there would not be substantial numbers of marine mammals exposed to the noise from the project compared to the affected population sizes;
- Take would not occur in places and/or times where take is more likely to result in impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat or Biologically Important Areas (other than for CIBWs as described below), or other habitats critical to recruitment or survival (*e.g.,* rookery);
- The area ensonified by Hilcorp's activities represents a very small portion of the available foraging area for all potentially impacted marine mammal species;
- Take would occur only within middle Cook Inlet and Trading Bay—a limited, confined area of any given stock's home range;
- Monitoring reports from previous projects with pile driving or tugging activities in Cook Inlet have documented little to no observable effect on individuals of the same species impacted by the specified activities; and
- The mitigation requirements are expected to be effective in reducing the effects of the specified activity by minimizing the numbers of marine mammals exposed to sound and the intensity of the exposures.

Cook Inlet Beluga Whales. For CIBWs, in the proposed rule we identified additional factors in addition to the factors discussed above for all species in the context of potential impacts to this endangered stock based on our evaluation of the take proposed for authorization. As described in the Changes from Proposed to Final Rule section and Estimated Take section, the number of Level B harassment conservatively expected to occur incidental to the specified activities increased from a maximum of 27 takes annually to 34 (a minor increase of 7 takes in a given year); across the 5-year effective period of the rule, the total number of Level B harassment takes to be authorized increased from 94 to 147, or 10.2 percent of the population assuming each take is of a different individual. We anticipate that disturbance to CIBWs would manifest in the same manner as other marine mammals described in the Negligible Impact Analysis and Determination section of the proposed rule (*see* 90 FR at 35025–35026) (*e.g.,* increased swimming speeds, changes in the direction of travel and dive behaviors, increased respiration rates, decreased foraging (if such activity were occurring), or alterations to communication signals) and we refer the reader to that section. NMFS recognizes that the CIBW population has fluctuated over the past 10 years and additional data are needed to address uncertainty regarding the current population trend. However, data over the past 6 years have shown a potential increase despite anthropogenic activities occurring in their critical habitat, including upper Cook Inlet where foraging is most concentrated (NMFS, 2024). In addition, large numbers of CIBWs have continued to use and pass through the project area, likely traveling to critical foraging grounds found in upper Cook Inlet, while noise-producing anthropogenic activities, including vessel use, have taken place during the past two decades (*e.g.,* Shelden *et al.,* 2013, 2015b, 2017, 2022; Shelden and Wade, 2019; Goetz *et al.,* 2023). Overall, the best available science supports the conclusion that CIBWs may experience some temporary Level B (behavioral) harassment from exposure to Hilcorp's specified activities; however, impacts to the population through effects to annual

rates of recruitment or survival are not anticipated.

In summary, the following factors support our determination that the impacts resulting from Hilcorp's planned activities are not expected to adversely affect the CIBWs through effects on annual rates of recruitment or survival:

- The area of exposure would be limited to habitat primarily used for transiting and not areas known to be of particular importance for feeding or reproduction;
- The activities are not expected to result in CIBWs abandoning critical habitat nor are they expected to restrict passage of CIBWs within or between critical habitat areas; and
- Any disturbance to CIBWs is expected to be limited to temporary modifications in behavior and would not be of a duration or intensity expected to result in impacts on reproduction or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned specified activity would have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The maximum annual number of takes allowed under the final rule is less than one-third of the best available population abundance estimates—a specifically, less than 4 percent for all stocks, except for CIBWs whose maximum annual number of takes allowed is 10.2 percent of the stock assuming all takes are of a different individual (table 4). NMFS notes this is a minor increase from the proposed rule wherein the maximum number of annual CIBW takes was 9.68 percent. The numbers of animals authorized to be taken are small relative to the relevant species or stock abundances even if each estimated take occurred to a new individual.

NMFS refers the reader to the discussion in the Small Numbers section of proposed rule regarding population abundance for the Mexico-North Pacific stock of humpback whale, Alaska stock of minke whale, Northeastern Pacific stock of fin whales, and Alaska stock of Dall's porpoise (*see* 90 FR at 35026–35027). This information remains valid and is not repeated here. Based on our analysis of the specified activities (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an ITA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

NMFS refers the reader to the discussion in the Unmitigable Adverse Impact Analysis and Determination section of the proposed rule (*see* 90 FR at 35027). This analysis remains valid and is not repeated here. In summary, any harassment to marine mammals would primarily be limited to minor behavioral changes (*e.g.,* increased swim speeds, changes in dive behaviors and communication signals, temporary avoidance near the tugs) and is anticipated to be short-term, mild, and not result in any abandonment or behaviors that would make the animals unavailable to Alaska Natives for subsistence uses. Hilcorp has developed a Stakeholder Engagement Plan that includes subsistence communities to minimize adverse effects on the availability of subsistence marine mammals for subsistence purposes from the activities.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Hilcorp's activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Hilcorp's proposed oil and gas activities would contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Hilcorp regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation or monitoring measures could be modified if new data suggests that such modifications would have a reasonable likelihood of more effectively achieving the goals of the mitigation and monitoring and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (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 ITAs, NMFS consults internally whenever we propose to authorize take

for endangered or threatened species, in this case with the NMFS Alaska Regional Office (AKRO).

NMFS proposed to authorize take of humpback whale (Mexico Distinct Population Segment (DPS) and Western North Pacific DPS), fin whale (Northeastern Pacific stock), beluga whale (Cook Inlet DPS), and Steller sea lion (Western DPS), which are listed under the ESA. NMFS Office of Protected Resources requested initiation of section 7 consultation with NMFS AKRO for its proposed action (*i.e.,* authorization to take marine mammals incidental to Hilcorp's specified activities). NMFS issued a Biological Opinion on December 19, 2025, concluding that the promulgation of the rule and issuance of LOA thereunder is not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and is not likely to result in the destruction or adverse modification of designated or proposed critical habitat.

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.,* promulgation of regulations and subsequent issuance of an LOA thereunder) with respect to potential impacts on the human environment. Accordingly, NMFS has prepared an Environmental Assessment (EA) to evaluate the environmental impacts associated with the proposed issuance of the regulations and LOA. NMFS' draft EA was made available during the proposed rule public comment period. No comments on the EA were received. NMFS has issued a final EA and Finding of No Significant Impact (FONSI) available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llcs-oil-and-gas-activities-cook-inlet-alaska.*

Promulgation

As a result of these determinations, NMFS is promulgating these regulations that (1) allow for the take of 12 marine mammal species, comprising 15 stocks, by Level B harassment, and take by Level A harassment of 9 of those 12 species, comprising 12 stocks, incidental to activities conducted by Hilcorp in support of oil and gas exploration, development, production, and decommissioning over a 5-year period (no serious injury or mortality is anticipated or authorized) and (2) prescribe mitigation, monitoring and reporting measures.

Waiver of Delay in Effective Date

The Assistant Administrator for Fisheries has determined that there is a sufficient basis under the Administrative Procedure Act (APA) to waive the 30-day delay in the effective date of the regulations contained in the final rule. Section 553 of the APA provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date with certain exceptions, including (1) for a substantive rule that relieves a restriction or (2) when the agency finds and provides good cause for foregoing delayed effectiveness 5 U.S.C. 553(d)(1) and (d)(3). Here, the issuance of regulations under section 101(a)(5)(A) of the MMPA is a substantive action that relieves the statutory prohibition on the taking of marine mammals, specifically, the incidental taking of marine mammals associated with Hilcorp's specified activities. Until the effective date of these regulations, Hilcorp is prohibited from taking marine mammals incidental to their specified activities.

The Assistant Administrator has also determined that there is good cause under the APA (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity, other than Hilcorp, is affected by the provisions of these regulations, and Hilcorp does not require 30 days to prepare for implementation of the regulations. Hilcorp has been conducting vessel activities identical to those described in this final rule for several years, and incidental take of marine mammals from these activities was most recently authorized under an IHA that was effective from September 24, 2024, through September 23, 2025, with similar requirements to those promulgated herein (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-hilcorp-alaska-llcs-production-drilling-support-activities*). Hilcorp has informed NMFS that they request that this final rule take effect as soon as possible to minimize the time without an MMPA incidental take authorization and avoid any potential disruption of Hilcorp's planned activities. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date.

Classification

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is significant for purposes of Executive Order 12866. Hilcorp's planned activities are a continuation of previously conducted activities that would support oil and gas exploration, development, production, and decommissioning in Cook Inlet, Alaska, over the course of 5 years. The activities would create economic benefits by allowing oil and gas to come to market more efficiently.

Hilcorp initiated the request for an MMPA incidental take authorization, which suggests that the company is relying on NMFS' authorization to proceed with its proposed action. While a MMPA incidental take authorization is not a pre-condition for conducting the proposed action (Hilcorp is ultimately responsible for this decision), it would provide Hilcorp with two key benefits: (1) a legal exemption from the MMPA's general prohibition on the take of marine mammals (assuming Hilcorp complies with the terms and conditions of its authorization); and (2) regulatory certainty because Hilcorp will be fully cognizant of NMFS' expectations in regard to the steps needed to be taken to address risks to marine mammals and how to minimize its legal exposure under the statute. Hilcorp will also incur costs to comply with certain mitigation and monitoring requirements, as required by the MMPA. Despite the additional costs of such measures, the costs related to MMPA compliance during Hilcorp's activities are small compared with expenditures on other aspects of construction and operations, and direct compliance costs of the regulatory requirements are unlikely to result in material impacts to the project.

In addition, cost savings may be generated by the reduced administrative effort required to obtain a LOA under the framework established by a rule compared to what would be required to obtain annual incidental harassment authorizations (IHA) under section 101(a)(5)(D). Absent the rule, to attain equivalent compliance with the MMPA, Hilcorp would need to apply for IHAs annually over the duration of their activities. Although not monetized, NMFS' analysis indicates that the upfront work associated with the rule (*e.g.,* analyses, modeling, process for obtaining an LOA valid for 5 years) likely saves significant time and money for both NMFS and Hilcorp.

The rule also results in certain non-monetized benefits. Should Hilcorp proceed with the project, the protection of marine mammals afforded by this rule may benefit the regional economy via tourism and recreation to some extent. Marine mammals within Cook Inlet that overlap with the proposed action are likely to benefit from the suite of mitigation and monitoring measures required by the rule, thereby helping to

ensure their long-term survival and their contribution to tourism and other recreational activities in the region.

In addition, some degree of benefits can be expected to accrue solely via ecological benefits to marine mammals and other wildlife as a result of this rulemaking. The published literature is clear that healthy populations of marine mammals and other co-existing species benefit regional economies and provide social welfare benefits to people. However, the literature does not provide a basis for quantitatively valuing the cost of anticipated incremental changes in environmental disturbance and marine mammal harassment associated with the rule.

Executive Order 14192

This rule is an Executive Order 14192 deregulatory action. The promulgation of incidental take regulations under MMPA section 101(a)(5)(A), as requested by applicants, is deregulatory because issuance allows an otherwise prohibited action (*i.e.,* the incidental taking of marine mammals) to proceed. The regulations increase flexibility and reduce burden by allowing for authorization of otherwise prohibited marine mammal take.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), at the proposed rule stage the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. As described in the proposed rule, Hilcorp is the only entity that would be subject to the requirements in these proposed regulations. Hilcorp employs thousands of people worldwide and has a market value in the billions of dollars. Therefore, Hilcorp is not a small governmental jurisdiction, small organization, or small business as defined by the RFA. No comments on the certification have been received, and no new information has been identified to change this conclusion. Therefore, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151 ''Applications and Reporting Requirements for the Incidental Take of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act'' and include the applications for regulations, subsequent LOAs, and reports. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The current information collection approved by OMB under control number 0648–0151 includes burden estimates for incidental take authorizations issued under the MMPA. The current numbers approved under 0648–0151 are as follows: 576 respondents, 576 responses, 70,236 burden hours, and $2,892,557 in labor and miscellaneous costs. This current rulemaking is expected to result in the following burden estimates; 1 respondent, 13 responses, and 9,302 burden hours, $136,823 in labor and miscellaneous costs. The burden hours in this rule fall within the existing burden estimates associated with this control number.

List of Subjects in 50 CFR Part 217

Acoustics, Alaska, Administrative practice and procedure, Endangered and threatened species, Fish, Marine mammals, Mitigation and monitoring requirements, Oil and Gas exploration, Reporting requirements, Transportation, Wildlife.

Dated: February 17, 2026.

Sarah Malloy,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 to read as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart Q, consisting of §§ 217.160 through 217.169, to read as follows:

Subpart Q—Taking Marine Mammals Incidental to Hilcorp Alaska, LLC Oil and Gas Activities in Cook Inlet, Alaska

Sec.

Subpart Q—Taking Marine Mammals Incidental to Hilcorp Alaska, LLC Oil and Gas Activities in Cook Inlet, Alaska

§ 217.160 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Hilcorp Alaska LLC (Hilcorp) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals in Cook Inlet, Alaska, and that occurs incidental to the activities described in paragraph (c) of this section. Requirements imposed on Hilcorp must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The incidental taking of marine mammals by Hilcorp may be authorized in a letter of authorization (LOA) only if it occurs within in Cook Inlet, Alaska.

(c) The taking of marine mammals by Hilcorp is only authorized if it occurs incidental to the use of tugs towing, holding, or positioning a jack-up rig, impact pile driving, and pipeline installation and/or replacement involving anchor handling and/or pipe pulling.

§ 217.161 Effective dates.

Regulations in this subpart are effective from February 20, 2026, through February 19, 2031.

§ 217.162 Permissible methods of taking.

Under an LOA issued pursuant to §§ 217.106 of this chapter and 217.166, the holder of the LOA (hereinafter ''Hilcorp'') may incidentally, but not intentionally, take marine mammals within the specified geographical region described in § 217.160(b) by harassment associated with the specified activities provided they are in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.163 Prohibitions.

Except for the takings permitted in § 217.162 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.166, it is unlawful for any person to do any of the following in connection with the specified activities:

(a) Violate or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under

this subpart or an LOA issued under §§ 216.106 of this chapter and 217.166;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than specified;

(d) Take a marine mammal should NMFS withdraw or suspend such LOA; or

(e) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.164 Mitigation requirements.

When conducting the specified activities identified in § 217.160(c), Hilcorp must implement the mitigation measures contained in this section and any LOA issued under §§ 216.106 of this chapter and 217.166 unless implementing the mitigation measure would create a risk to human safety or cause pile instability or refusal. These mitigation measures include, but are not limited to:

(a) A copy of any issued LOA should be in the possession of Hilcorp, its designees, and work crew personnel operating under the authority of the issued LOA.

(b) Hilcorp must coordinate with local Tribes as described in its Stakeholder Engagement Plan, notify the communities of any changes in the operation, and take action to avoid or mitigate impacts to subsistence harvests.

(c) Tug boat and pile driving supervisors and crews, the monitoring team, and relevant Hilcorp staff must be trained prior to the start of all activities so that responsibilities, communication procedures, mitigation measures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

(d) Hilcorp must implement clearance and shutdown zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 217.166.

(e) Pre-start clearance monitoring.

(1) Prior to initiating any activity or resuming those activities after a 30-minute lapse (*e.g.,* pauses between intermittent pile driving), Hilcorp must conduct monitoring of the clearance zones 30 minutes prior to commencing activities identified in § 217.160(c) (*i.e.,* pre-start clearance monitoring).

(2) Except for tugs towing a jack-up rig, activities may commence or resume if, following 30 minutes of observation of the clearance zone, it is determined by a protected species observer (PSO) that the clearance zones are clear of marine mammals.

(3) Should a marine mammal be within the clearance zone during the clearance monitoring period, the activity (except for tugs under tow if tidal restrictions necessitate) must not commence or resume until any animal has left the clearance zone and is on a path away from the clearance zone or at least 30 minutes has elapsed for all baleen whale species and Cook Inlet Beluga Whales (CIBWs) without subsequent detection, or 15 minutes has elapsed without subsequent detection for all other species.

(f) Pile driving at the Tyonek Platform may only occur from November 15 through April 15.

(g) Hilcorp must cease all pile driving activities, including soft starts, if a marine mammal is observed entering or within the shutdown zone. Should safety or pile instability or refusal concerns prevent a shutdown, pile driving may continue only until the current segment of the pile is driven; no additional sections of pile or additional piles may be driven until a PSO has determined that the clearance zones are clear of marine mammals.

(1) If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and is visually confirmed to be beyond the shutdown zone or at least 30 minutes has elapsed for all baleen whale species and CIBWs without subsequent detection or 15 minutes has elapsed without subsequent detection for all other species.

(2) If during pile driving, a PSO can no longer effectively monitor the entirety of the corresponding shutdown zone due to environmental conditions (*e.g.,* fog, rain, wind), pile driving may continue only until the current segment of the pile is driven. No additional sections of pile or additional piles may be driven until conditions improve such that the shutdown zone can be effectively monitored. If the shutdown zone cannot be monitored for more than 15 minutes, the entire zone must be cleared again for 30 minutes prior to reinitiating pile driving.

(h) Hilcorp must use soft-start techniques when impact pile driving. Should safety or pile instability/refusal concerns arise during a soft start wherein this process cannot be met, Hilcorp must use the minimum amount of energy practicable. Prior to soft-start beginning, the operator must receive confirmation from the PSO that the clearance zone is clear of any marine mammals.

(i) For transportation of a jack-up rig to or from the Tyonek platform, in addition to PSOs stationed on the rig during towing, an additional PSO must be stationed on the Tyonek Platform to monitor for marine mammals. The PSO should be on watch for at least 1 hour before tugs are expected to arrive (scheduled to approach the estimated 120-dB isopleth).

(j) Unless deviation is necessary to maintain safe maneuvering speed and justified because the vessel is in an area where oceanographic, hydrographic, and/or meteorological conditions severely restrict the maneuverability of the vessel; an emergency situation presents a threat to the health, safety, life of a person; or a vessel is actively engaged in emergency rescue or response duties, including vessel-in-distress or environmental crisis response, Hilcorp must:

(1) Maneuver tugs engaged in towing, holding, or positioning a jack-up rig, and anchor handling and pipe pulling activities such that they maintain a consistent speed (approximately 4 knots [kt; 7 kilometers (km)/hr]) and avoid multiple changes of speed and direction to make the course of the vessels as predictable as possible to marine mammals in the surrounding environment, characteristics that are expected to be associated with a lower likelihood of disturbance;

(2) Not actively approach a marine mammal purposefully and must adhere to NOAA Alaska Region Marine Mammal Viewing Guidelines;

(3) Reduce vessel speed to < 9 km/hr (5 kt) when within 274 meters (m; 300 yards) of any whale, reduce speed to 18.5 km/hr (10 kt) or less when weather conditions reduce visibility to 1.6 km (1 mile [mi]) or less, avoid multiple changes in direction and speed when within 274 m (300 yards) of any whale, and place the engine in neutral if a whale is approaching within 91 m (100 yards) of a vessel;

(4) Maintain a distance of at least 2.4 km from the Mean Lower Low Water line of the Susitna River Delta (Beluga River to the Little Susitna River) between April 15 and November 15; and

(5) Maintain a watch for marine mammals while underway and check water immediately adjacent to the vessel prior to engaging propellers; should a marine mammal be observed near propellers and it is determined that interaction is possible, delay engaging propellers.

(k) Hilcorp must maintain clean, taught lines in the water such that no lines are in the water unless both ends

are under tension and affixed to vessels or gear.

§ 217.165 Requirements for monitoring and reporting.

Hilcorp must implement the following monitoring and reporting measures:

(a) Monitoring must be conducted by NMFS-approved PSOs during all activities for which take is authorized, in accordance with Hilcorp's Marine Mammal Monitoring and Mitigation Plan (which is included in appendix A of Hilcorp's application). PSOs must be independent of the activity contractor (*e.g.,* employed by a subcontractor) and have no other assigned tasks during monitoring duties.

(b) A lead PSO must be designated for all specified activities. The lead PSO must have prior experience performing the duties of a PSO during in-water activities pursuant to a NMFS-issued incidental take authorization or letter of concurrence.

(c) PSOs must monitor for marine mammals from the best available vantage point, ideally an elevated stable platform from which the PSO has an unobstructed 360-degree view of the water or a total 360-degree view of water between all PSOs on watch. Monitoring must occur from 30 minutes before an activity commences to 30 minutes after the activity ceases.

(d) PSOs must use a combination of equipment to scan the appropriate monitoring area and to identify the relevant mitigation distance from an activity, including the naked eye, binoculars (minimum 7x50), and night vision devices for low light and nighttime operations.

(e) PSOs must be in communication with all rig or vessel captains via VHF radio and/or cell phones at all times and alert rig or vessel captains to all marine mammal sightings relative to the vessel location.

(f) PSOs may not work in shifts lasting more than 4 hours without a minimum of 1-hour break and may not be on watch more than 12 hours in a 24-hour period.

(g) Hilcorp must notify NMFS Office of Protected Resources (OPR) at least 48 hours prior to the start of the specified activities each year.

(h) Hilcorp must submit interim monthly monitoring reports on the 15th day of the month after any specified activities occurred. These reports must include a summary of marine mammal species and behavioral observations, delays, shutdowns, and activities completed during the reporting period. The reports also must include an assessment of the amount of work remaining for the year, in addition to the number of CIBWs observed within estimated Level B harassment zones during activities to date, and any instances where mitigation could not be implemented due to safety or pile instability/refusal concerns.

(i) Hilcorp must submit a draft annual summary monitoring report on all monitoring conducted during each project year which includes final electronic data sheets within 90 calendar days of the completion of marine mammal monitoring or 90 days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 days of the end of year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring. If no comments are received from NMFS within 30 days of receipt of the draft reports, the report may be considered final. If comments are received, revised reports addressing NMFS comments must be submitted within 30 days after receipt of comments. At a minimum, the reports must contain:

(1) Dates and times (begin and end) of all marine mammal monitoring;

(2) Activities occurring during each daily observation period, including the type of activity (tugs under load with a jack-up rig, pile driving, anchor handling, pipe pulling), the total duration of each type of activity, when nighttime operations occurred (and if they did, whether night vision devices (NVDs) were employed, including which lenses were utilized), and whether towing against the tide was required;

(3) PSO locations during marine mammal monitoring;

(4) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), Beaufort sea state, and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance; and

(5) Upon observation of a marine mammal, the following information must be collected and included in the annual and 5-year reports:

(i) Name of the PSO who sighted the animal, observer location, and activity at time of sighting;

(ii) Time of sighting;

(iii) Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(iv) Distances and bearings of each marine mammal observed in relation to the vessel (*e.g.,* tug, pipe lay barge) or pile being driven for each sighting (if pile driving was occurring at time of sighting);

(v) Estimated number of animals (min/max/best);

(vi) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

(vii) Animal's closest point of approach and estimated time spent within the harassment zone;

(viii) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses to the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(ix) Detailed information about any implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in the behavior of the animal, if any;

(x) All PSO datasheets and raw sightings data in electronic spreadsheet format; and

(xi) Any instances where mitigation could not be implemented due to safety or pile instability/refusal concerns.

(j) In the event that personnel involved in Hilcorp's activities discover an injured or dead marine mammal, Hilcorp must report the incident to NMFS OPR and the Alaska Regional Stranding Network as soon as feasible. If the death or injury was caused by a specified activity, Hilcorp must immediately cease the specified activity until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the LOA. Hilcorp must not resume their activities until notified by NMFS. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

§ 217.166 Letters of authorization.

(a) To incidentally take marine mammals pursuant to this subpart, Hilcorp must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the effective dates of this subpart in § 217.161.

(c) In the event Hilcorp proposes projected changes to the activity or to mitigation and monitoring measures required by an LOA, Hilcorp must request and obtain a modification of the LOA as described in § 217.167.

(d) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(e) Issuance of the LOA should be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(f) Notice of issuance or denial of an LOA should be published in the **Federal Register** within 30 days of a determination.

§ 217.167 Modifications of letters of authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.166 for the specified activities may be modified upon request by Hilcorp, provided that:

(1) The changes to the activity or the mitigation, monitoring, or reporting does not change the findings made pursuant to this subpart and do not result in more than a minor change in the total estimated number of takes (or distribution by species or stock or years); and

(2) NMFS determines that Hilcorp implemented the mitigation, monitoring, and reporting measures required by the LOA for which modification is requested.

(b) An LOA issued under §§ 216.106 of this chapter and 217.166 may be modified at NMFS' initiation if:

(1) Doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures; or

(2) NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in an LOA issued pursuant to §§ 216.106 of this chapter and 217.166, in which case, the LOA may be modified without prior notice or opportunity for public comment; however, notification will be published in the **Federal Register** within 30 days of the action.

(c) If the modifications to the specified activities, mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment prior to making a determination on issuance.

(d) Possible sources of data that could contribute to a decision to modify the LOA include, but are not limited to:

(1) Results from Hilcorp's monitoring;

(2) Results from other marine mammal and/or sound research or studies; and

(3) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent LOAs.

§§ 217.168–217.169 [Reserved]

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