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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG133

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Port of Kalama Expansion Project on the Lower Columbia River

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Port of Kalama (POK) for the take of marine mammals, by harassment, incidental to construction activities associated with an expansion project at the Port of Kalama on the Lower Columbia River, Washington.

DATES: This Authorization is in effect from October 18, 2018 to October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of such takings.

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

History of Request

On September 28, 2015, we received a request from the POK for authorization of the taking, by Level B harassment only, of marine mammals incidental to the

construction associated with the Port of Kalama Expansion Project, which involved construction of the Kalama Marine Manufacturing and Export Facility including a new marine terminal for the export of methanol, and installation of engineered log jams, restoration of riparian wetlands, and the removal of existing wood piles in a side channel as mitigation activities. The specified activity is expected to result in the take of three species of marine mammals (harbor seals, California sea lions, and Steller sea lions). A final version of the application, which we deemed adequate and complete, was submitted on December 10, 2015. We published a notice of a proposed IHA and request for comments on March 21, 2016 (81 FR 715064). After the public comment period and before we issued the final IHA, POK requested that we issue the IHA for 2017 instead of the 2016 work season. We subsequently published the final notice of our issuance of the IHA on December 12, 2016 (81 FR 89436), effective from September 1, 2017-August 31, 2018. In-water work associated with the project was expected to be completed within the one-year timeframe of the IHA.

On June 21, 2018, POK informed NMFS that work relevant to the specified activity considered in the MMPA analysis for the 2017-2018 IHA was postponed and would not be completed. POK requested that the IHA be issued to be effective for the period from 2018 - 2019. In support of that request, POK submitted an application addendum affirming that no change in the proposed activities is anticipated and that no new information regarding the abundance of marine mammals is available that would change the previous analysis and findings. A notice for the proposed incidental take authorization was published on July 25, 2018 (83 FR 35220), and a corrected notice was published on August 14, 2018 (83 FR 40257). Therefore, comments were received until

September 13, 2018. Please refer to the **Comments and Responses** section below for information on the comments received during the comment periods for the proposed IHA.

Description of the Activity

The 2017-2018 IHA covered the incidental take of marine mammals due to construction of a marine terminal and dock/pier for the export of methanol, and associated compensatory mitigation activities for the purposes of offsetting habitat effects from the action. The marine terminal will be approximately 45,000 square feet in size, supported by 320 concrete piles (24-inch precast octagonal piles to be driven by impact hammer) and 16 steel piles (12 x 12-inch and 4 x 18-inch anticipated to be driven by vibratory hammer, and impact hammering will only be done to drive/proof if necessary). The compensatory mitigation includes installation of eight engineered log jams (ELJs), which will be anchored by untreated wooden piles driven by impact hammer at low tides (not in water). The compensatory mitigation also includes removal of approximately 157 untreated wooden piles from an old trestle in a nearby backwater area. The piles will be removed either by direct pull or vibratory extraction. Finally, the compensatory mitigation includes wetland restoration and enhancement by removal of invasive species and replacement with native wetland species.

Since no changes have been made to the planned activities reflected in the proposed IHA, NMFS refers the reader to the documents related to the 2017-2018 IHA for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2017-2018 IHA for the POK's Port of Kalama Expansion Project (81 FR 89436, December 12, 2016), the **Federal Register**

notice of the proposed IHA (81 FR 15064, March 21, 2016), POK's application (and 2018 application addendum), and all associated references, which can be found at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.

Comments and Responses

NMFS published a notice of receipt of POK's updated application addendum and proposed IHA in the **Federal Register** on July 25, 2018 (83 FR 35220), with a comment response date of August 24, 2018. However, during the public review period for this notice, it was noted that instructions for submitting comments were lacking. Therefore, a second notice of the proposed IHA was published on August 14, 2018 (83 FR 40257), which included full instructions for submittal of comments. Comments were accepted on this corrected notice until September 13, 2018. NMFS received two comments during the review of the first notice. One comment was from a private citizen and one comment was received from the Columbia Riverkeeper, stating that instructions for submitting comments was not clear and voicing their concern with the use of a Categorical Exclusion (CE) for our action. During public review of the corrected notice, NMFS received four additional comments. Two of these additional comments were from the same private citizen who commented on the first notice; one was from the Marine Mammal Commission (MMC); and one was from the Center for Biological Diversity (CBD). Copies of the full comments received are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. Additionally, all comments received on both notices are summarized and responses are provided below:

Comment: Three comments were received from the same private citizen (Jean Public) expressing opposition to the project and concern regarding any government authorization to kill birds, seals, and sea lions in the Columbia River. One of these comments also suggested charging the POK (terminal builders) \$100,000 for every seal they kill.

Response: NMFS has issued an IHA to the POK for the incidental take, by Level A and Level B harassment only, of marine mammals due to in-water construction activities associated with the POK expansion project. Mortality is not expected or authorized by the IHA.

Comment: The MMC concurred with NMFS's findings and recommended that NMFS issue the IHA subject to inclusion of the mitigation, monitoring, and reporting measures discussed in the notice of the Proposed IHA.

Response: NMFS thanks the MMC for their comment and concurs with the recommendation. NMFS has issued the IHA to the Port of Kalama subject to the mitigation, monitoring, and reporting measures that were included in the notice of the Proposed IHA.

Comment: The MMC recommended that NMFS revise the Level A harassment zones for harbor seals during impact driving of concrete piles and vibratory driving of steel piles based on eight hours of activities, or eight piles/day, because harbor seals may be present in the project area for longer periods than California or Steller sea lions and therefore accumulate more sound energy.

Response: NMFS agrees that it is possible that harbor seals may be present in the general project area for longer periods than California or Steller sea lions. However,

NMFS feels that it is unreasonable to assume that seals would remain within the area for a full eight hours, as they may be transiting between two sites (one approximately one mile upstream and one approximately 3.5 miles downstream) where they are known to forage and/or haul out. In addition, it is not reasonable to assume that pile driving activities would occur for eight consecutive hours daily, and is more likely that these activities would occur for an hour to two hours at a time, and would be broken up by time needed to set up new piles. However, NMFS has determined it is reasonable to assume that seals would be present for double the amount of time as sea lions (assuming a two-hour duration versus a one-hour duration due to the fact that they may be transiting the area twice if they move from one site to the other and return again) results in a Level A harassment threshold distance of 63 m for impact driving of concrete piles and 26 m for vibratory driving of steel piles.

As noted in the notice for the proposed IHA, Level A harassment takes proposed for authorization did not rely on calculated takes, and were qualitatively proposed for authorization out of an abundance of caution in the event that some seals may be undetected before entering the Level A harassment zone. Therefore, the amount of Level A harassment takes authorized has not changed as a result of reconsidering the Level A harassment zone and only results in a revision of the Level A harassment monitoring area. Therefore, the requirement for monitoring and shut down distance to avoid Level A harassment take has been revised to 63 m and 26 m to correspond to a two-hour duration for impact driving of concrete piles and vibratory driving of steel piles, respectively.

Comment: The MMC recommended that NMFS further investigate appropriate timeframes over which sound exposure levels should be accumulated when estimating

Level A harassment zones, and recommended that NMFS make this a priority to resolve in the near future. MMC further recommended that NMFS consult with its own and external scientists and acousticians to determine appropriate accumulation times.

Response: NMFS considers this a priority and has recently formed a group to work on the issue of accumulation time.

Comment: The Commission expressed continuing concern with NMFS's notice that one-year renewals could be issued in certain circumstances without additional public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as abbreviated notices such as was done in this instance. The Commission further recommended that if NMFS did not pursue renewals solely using abbreviated notices, that the agency provide a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: As stated in previous responses to this comment from the Commission, the process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The Federal Register notice of the proposed IHA expressly notified the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and seeks public comment on those circumstances. Importantly, such renewals would be limited to circumstances where: the activities are identical or nearly identical to those analyzed in the proposed IHA or the activities would not be completed by the time the IHA expires and renewal would allow completion of the activities beyond that described in the Dates and Duration section; monitoring does not

indicate impacts that were not previously analyzed and authorized; and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial proposed IHA. NMFS has, however, modified the language to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the Federal Register, as they are for all IHAs. The option for issuing renewal IHAs has been in NMFS's implementing regulations for the incidental take provisions of the MMPA (Section 101(a)(5)(A) and (D)) since 1996.

Comment: The Columbia Riverkeeper (Riverkeeper) submitted a comment expressing concern with NMFS's use of a CE for purposes of the National Environmental Policy Act (NEPA) for the issuance of our IHA to the POK for incidental take of marine mammals from construction activities associated with the POK expansion project. The Riverkeeper stated that use of the CE would be counter to NOAA's NEPA guidance, citing language in the Companion Manual to NOAA Administrative Order 216-6A that says a CE may only be applied when the proposed action is not part of a larger action and can therefore be reviewed independently from other actions under NEPA. In addition, the Riverkeeper asserted that use of the CE would be a waste of agency time and resources since the US Army Corps of Engineers (USACE) is currently preparing an Environmental Assessment (EA) for the overall construction project. The Riverkeeper suggested that NMFS should participate in USACE's ongoing NEPA process and base its IHA decision on the USACE NEPA document. In addition, the Center for Biological

Diversity (CBD) submitted a comment stating they were in agreement with the Riverkeeper comment.

Response: The application of a CE for NMFS's action (issuance of an IHA) is entirely consistent with NOAA's NEPA guidance and practices. The issuance of an IHA is not part of a larger *NMFS* action that would be segmented for the purposes of NEPA (*i.e.*, NMFS's action would not be segmented for purposes of NEPA such that several CEs would be required for a larger project, as the only action NMFS has would be the issuance or denial of the IHA for the incidental take of marine mammals due to in-water construction work associated with the POK expansion). Further, as stated in the notice of the proposed IHA, NMFS had previously prepared its own EA for the issuance of the previous IHA, which resulted in a Finding of No Significant Impact (FONSI). Based on this past analysis, as well as an Administrative Record justifying the use of the CE (CE B4) for similar types of activities, NMFS has determined that the use of the CE for this action is well supported. While we appreciate that the USACE must prepare a NEPA document for its own action (issuance of a permit, or permits, for the larger construction project), relying on the NEPA analysis for this larger project would be of no benefit for NMFS's purposes due to the fact that the majority of the larger project construction activities would be associated with upland areas with no potential for the incidental take of marine mammals associated with NMFS's action.

Comment: The CBD commented that their primary concern is that the scope of the authorization is arbitrarily narrow in light of the Project's recognized impacts on marine mammals. More specifically, the CBD states that NMFS previously considered the Project and concluded in its biological opinion that the Project would adversely affect

blue, humpback, fin, and sperm whales, yet none of these species are considered in the applicant's request. The Biological Opinion also concluded the Project would adversely affect several species of Chinook salmon and critical habitat, yet the applicant did not consider the resulting impacts to the critically endangered Southern Resident killer whales that feed on those salmon.

Response: The two statutes (Endangered Species Act (ESA) and MMPA) are different both substantively and procedurally, with different analyses and potentially involving different scopes. The Biological Opinion was prepared pursuant to section 7(a)(2) of the ESA due to the requirement for consultation on the effects of the proposed action by a federal action agency, in this case the USACE, to issue permits for the construction of the Kalama Manufacturing and Marine Export Facility on the Columbia River and to Northwest Pipeline LLC for construction of the Kalama Lateral Project.¹ The Biological Opinion evaluates the effects of the USACE issuance of permits that would authorize the construction project for the marine export facility, which is a component of the overall Kalama Manufacturing and Marine Export Facility project. The ESA consultation (Biological Opinion) evaluates the direct and indirect effects of the proposed action, together with interrelated and interdependent actions such as the manufacturing/production facility, into the reasonably foreseeable future. Therefore, the ESA consultation broadly evaluated the effects of the agency action. The Biological Opinion determined that the project is likely to indirectly affect several species of marine mammals including blue, humpback, fin, and sperm whales, based on increased vessel

¹ The U.S. Department of Energy is also identified as an action agency because of its consideration of whether to issue a loan guarantee for the project.

traffic (including increased potential for ship strike and noise associated with OGVs and supertankers) from the long-term operation of the facility.

The Biological Opinion does not identify potential effects of pile driving/in-water construction in regard to any ESA-listed marine mammal species, as none are anticipated to be present in the area of pile driving activities. The Biological Opinion did determine adverse effects to salmon as a result of in-water construction/pile driving but also concluded that the proposed action is not likely to adversely affect southern resident killer whales.

The IHA was issued pursuant to section 101(a)(5)(D) of the MMPA, which requires NMFS to authorize the incidental (but not intentional) take from a specified activity (in this case, in-water construction work associated with the Kalama Manufacturing and Marine Export Facility) in a specified geographic region for a one-year period if the relevant statutory standards are satisfied. The applicant for an IHA describes the specified activity for which the IHA is requested, and need not be a federal action agency. The IHA does not evaluate interrelated and interdependent activities of the specified activity. As Steller sea lions, California sea lions, and harbor seals are the only marine mammal species anticipated to occur in the specified area, these are the appropriate species considered for the IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities is found in the previous documents referenced above, which remain applicable to this IHA as well. In addition, NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature. Since the submittal of the 2015

IHA application, the USACE has published updated data on pinniped presence at the Bonneville Dam (Tidwell *et al.*, 2017). This information reveals that in both 2016 and 2017 the numbers of pinnipeds present at Bonneville Dam were within the range of historical variability. The latest USACE data does not suggest a trend that would require a modification to the take estimates or to the effects analysis (see Table 1 below for a summary of monitoring data by year from Tidwell *et al.*, 2017). Therefore, NMFS has determined that the updated information does not affect our analysis of impacts for the 2018-2019 IHA.

Table 1. Minimum estimated number of individual pinnipeds observed at Bonneville Dam tailrace areas and the hours of observation during the focal sampling period, 2002 to 2017 (from Tidwell *et al.*, 2017).

Year	Total Hours Observed	California Sea Lions	Steller Sea Lions	Harbor Seals	Total Pinnipeds
2002	662	30	0	1	31
2003	1,356	104	3	2	109
2004	516	99	3	2	104
2005*	1,109	81	4	1	86
2006	3,650	72	11	3	86
2007	4,433	71	9	2	82
2008	5,131	82	39	2	123
2009	3,455	54	26	2	82
2010	3,609	89	75	2	166
2011	3,315	54	89	1	144
2012	3,404	39	73	0	112
2013	3,247	56	80	0	136
2014	2,947	71	65	1	137
2015	2,995	195	69 ^a	0	264
2016	1,974	149	54 ^a	0	203
2017	1,142	92	63 ^a	1	156

*Observations did not begin until March 18 in 2005.

^a In 2015, 2016, and 2017 the minimum estimated number of Steller sea lions was 55, 41, and 32, respectively. These counts were less than the maximum number of Steller sea lions observed on one day, so Tidwell *et al.* (2017) used the maximum number observed on one day as the minimum number. This difference was driven by a focus on California sea lions and lack of branding or unique markers on Steller sea lions.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

A description of the potential effects of the specified activities on marine

mammals and their habitat is found in the previous documents referenced above, and remain applicable to this proposed IHA. There is no new information on potential effects that would change our analyses or determinations under the 2018-2019 IHA.

Estimated Take

A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The methods of estimating take for this IHA are identical to those used in the 2017-2018 IHA, as is the density of marine mammals. The source levels, also remain unchanged from the 2017-2018 IHA, and NMFS's 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2016) was used to address new acoustic thresholds in the notice of issuance of the 2017-2018 IHA (see Table 2 for NMFS User Spreadsheet inputs). As stated above, since the submittal of the application for the 2017-2018 IHA (in effect from September 1, 2017 through August 31, 2018), the USACE has published updated data on pinniped presence at the Bonneville Dam, and this data does not suggest a trend that would require a modification to the take estimates or effects analysis. Consequently, the authorized Level B harassment take for this 2018-2019 IHA is identical to the 2017-2018 IHA, as presented in Table 3 below. However, the originally issued IHA did not authorize any Level A harassment take. As harbor seals are smaller and may be more difficult to detect at larger Level A harassment zones, and to account for the potential that they may be unseen or linger longer than expected, a small number of takes by Level A harassment is now authorized. Finally, the pile driving duration informing the calculation of Level A harassment zone sizes has changed from the notice of the proposed IHA as a result of a

public comment received. As seals are not transiting to the Bonneville Dam similar to sea lions, and may spend more time in the project vicinity, the duration has been doubled for these species for impact driving of concrete piles and for vibratory driving of steel piles. For impact driving of steel piles, the duration was kept at the original one hour due to the fact that impact driving of these piles would only occur briefly (for proofing) if at all.

Table 2. Inputs for NMFS User Spreadsheet.

Input Parameter	Vibratory Pile Driving (steel)	Impact Pile Driving (steel)	Impact Pile Driving (concrete)
Weighting Factor Adjustment ¹	2.5	2	2
Source Level (SL) ²	170	178	166
Duration ³	2 hours	1 hour	2 hours
Strikes per pile	--	1,025	1,025
Piles per day ³	1 (1 hour duration)	-- (1 pile/hour)	-- (1 pile/hour)
Propagation (xlogR)	15	15	15
Distance from SL measurement	10	10	10

¹ In instances where full auditory weighting functions associated with the SEL_{cum} metric cannot be applied, NMFS has recommended the default, single frequency weighting factor adjustments (WFAs) provided here. As described in Appendix D of NMFS's Technical Guidance (NMFS, 2016), the intent of the WFA is to broadly account for auditory weighting functions below the 95 frequency contour percentile. Use of single frequency WFA is likely to over-predict Level A harassment distances.

² SLs from CalTrans (2012). SL for all steel piles are based on 18" steel pipe (4 of the piles are 18" and 12 of the piles are 12").

³ A 1-hour duration was used for California and Steller sea lions, as there are no haul-outs in the project area. Animals are transiting through the project area, and are not anticipated to be present for a full 8-hour day of pile driving activity. POK estimates 6-8 piles/day, or approximately 1 pile/hour. Animals are anticipated to be present for the duration of 1 pile being driven (1 hour) at most. For harbor seals, a two-hour duration was used, as they may be transiting between two sites (one approximately one mile upstream and one approximately 3.5 miles downstream of the project area). Given that these animals may transit back and forth between these two sites, the duration was doubled.

Table 3. Estimated take authorized and proportion of population potentially affected.

	Estimated Take by Level B	Estimated Take by Level A	Abundance of Stock	Percentage of stock potentially	Population trend

	harassment	harassment		affected	
Harbor seal	1,530	10	24,732	6.2	Stable
California sea lion	372	0	153,337	0.2	Stable
Steller sea lion	372	0	59,968	0.6	Increasing

Description of Mitigation, Monitoring and Reporting Measures—A description of mitigation, monitoring, and reporting measures is found in the previous documents referenced above, and remain unchanged for this IHA with the exception of a change in the required monitoring distance to avoid Level A harassment takes. In summary, mitigation includes implementation of shut down procedures if any marine mammal approaches or enters the Level A harassment zone for pile driving (26 m (85 feet (ft)) for vibratory pile driving of steel piles; 63 m (207 ft) for impact driving of concrete piles; and 252 m (828 ft) for impact driving of steel piles). For in-water heavy machinery work other than pile driving (*e.g.* standard barges, barge-mounted cranes, excavators, etc.), if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. One trained observer must monitor to implement shutdowns and collect information at each active pile driving location (whether vibratory or impact driving of steel or concrete piles).

At least three observers must be on duty during impact driving at all times. As discussed above, one observer must monitor and implement shutdowns and collect information at each pile driving location at all times. In addition, two shore-based observers are required (one upstream of the project and another downstream of the project), whose primary responsibility shall be to record pinnipeds in the Level B

harassment zone and to alert the barge-based observer to the presence of pinnipeds, thus creating a redundant alert system for prevention of injurious interaction as well as increasing the probability of detecting pinnipeds in the disturbance zone. At least three observers must be on duty during vibratory pile driving activity for the first two days, and thereafter on every third day to allow for estimation of Level B harassment takes. Similar to requirements for impact driving, the first observer must be positioned on a work platform or barge where the entirety of the shutdown zone can be monitored. Shore based observers must be positioned to observe the disturbance zone from the bank of the river. Protocols will be implemented to ensure that coordinated communication of sightings occurs between observers in a timely manner.

Pile driving activities may only be conducted during daylight hours. If the shutdown zone is obscured by fog or poor lighting conditions, pile driving will not be initiated until the entire shutdown zone is visible. Work that has been initiated appropriately in conditions of good visibility may continue during poor visibility. The shutdown zone will be monitored for 30 minutes prior to initiating the start of pile driving, during the activity, and for 30 minutes after activities have ceased. If pinnipeds are present within the shutdown zone prior to pile driving, the start will be delayed until the animals leave the shutdown zone of their own volition, or until 15 minutes elapse without re-sighting the animal(s).

Soft start procedures must be implemented at the start of each day's impact pile driving and at any time following cessation of impact driving for a period of thirty minutes or longer. If steel piles require impact installation or proofing, a bubble curtain must be used for sound attenuation. If water velocity is 1.6 ft per second (1.1 miles per

hour (mph)) or less for the entire installation period, the pile being driven must be surrounded by a confined or unconfined bubble curtain that will distribute small air bubbles around 100 percent of the pile perimeter for the full depth of the water column. If water velocity is greater than 1.6 feet per second (1.1 mph) at any point during installation, the pile being driven must be surrounded by a confined bubble curtain (*e.g.*, a bubble ring surrounded by a fabric or non-metallic sleeve) that will distribute air bubbles around 100 percent of the pile perimeter for the full depth of the water column.

Determinations

The POK proposes to conduct activities in 2018-2019 that are identical to those covered in the current 2017-2018 IHA. As described above, the number of estimated takes of the same stocks of harbor seals (OR/WA Coast stock), California sea lion (U.S. stock), and Steller sea lion (Eastern DPS) is the same for this IHA as those authorized in the 2017-2018 IHA, which were found to meet the negligible impact and small numbers standards. The authorized take of 1,540 harbor seals; 372 California sea lions, and 372 Steller sea lions represent 6.2 percent, 0.2 percent, and 0.6 percent of these stocks of marine mammals, respectively. We evaluated the impacts of the additional authorization of 10 Level A harassment takes of harbor seal, and find that consideration of impacts to these 10 individuals accruing a small degree of permanent threshold shift (PTS) does not meaningfully change our analysis, nor does it change our findings/determinations. This IHA includes identical required mitigation, monitoring, and reporting measures as the 2017-2018 IHA, and there is no new information suggesting that our prior analyses or findings should change.

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

National Environmental Policy Act

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500-1508), NMFS prepared an EA to consider the direct, indirect and cumulative effects to the human environment resulting from our previous IHA action (issuance of an IHA for incidental take of marine mammals due to the POK Expansion project). NMFS made the EA available to the public for review and comment in order to assess the impacts to the human environment of issuance of the 2017-2018 IHA to the POK. Also in compliance with NEPA and the CEQ regulations, as well as NOAA Administrative Order 216-6, NMFS made a FONSI on October 24, 2016, for issuance of the 2017-2018 IHA. These NEPA documents are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Since this IHA covers the same work covered in the 2017-2018 IHA, NMFS has reviewed our previous EA and FONSI, and has determined that our current action is consistent with categories of activities identified in CE B4 of the Companion Manual for

NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. We have reviewed all comments submitted in response to this notice prior to concluding our NEPA process and making our final decision on the 2018-2019 IHA request.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to POK for the incidental take of marine mammals due to in-water construction work associated with the POK Expansion Project for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 6, 2018.

Donna S. Wieting,

Director,

Office of Protected Resources,

National Marine Fisheries Service.

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