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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XR077]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Gustavus Ferry Terminal Improvements Project

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 Alaska Department of Transportation and Public Facilities (ADOT&PF) to incidentally harass, by Level A and Level B harassment only, marine mammals during pile driving and removal activities associated with the Gustavus Ferry Terminal Improvements Project in Gustavus, Alaska.

DATES: This authorization is effective for one year from February 15, 2020 through February 14, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/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 mitigation, monitoring and reporting of such takings are set forth.

Summary of Request

On November 20, 2019, NMFS received a request from the ADOT&PF for an IHA to take marine mammals incidental to in-water construction activities in Gustavus, Alaska. NMFS previously issued an IHA to ADOT&PF to incidentally take seven species of marine mammal, by Level A and Level B harassment, during construction activities associated with this same project. The IHA, issued on April 4, 2017 (82 FR 17209; April 10, 2017), had effective dates of December 15, 2017 through December 14, 2018. However, ADOT&PF was unable to conduct any of the work and, therefore, requested a new IHA. NMFS issued a second IHA with effective dates of December 15, 2018 through December 14, 2019 (83 FR 55348; November 5, 2018) to cover the incidental take analyzed and authorized in the first IHA. There were minor modifications to the number of piles driven but these had no effect on authorized take numbers, monitoring requirement, or reporting measures, which remained the same as stated in the original 2017-2018 IHA.

ADOT&PF was unable to meet the fall pile driving window (September 1 through November 30, 2019) as originally anticipated. Due to this setback, construction is planned to begin in spring 2020. ADOT&PF submitted an addendum to the original application requesting that a supplementary two-week timeframe be included in the spring window from February 15 through May 31, 2020. During this two-week timeframe, the contractor will begin vibratory removal of structures in order to get ahead of schedule while also accommodating for one last sailing of the ferry to the community before the ferry terminal's closure for the remainder of construction. The only difference between this IHA and previously issued IHAs is a construction start date of February 15

instead of March 1. Take numbers remain the same as authorized for the 2018-2019 IHA referenced above.

Description of Activity

The 2020-2021 IHA is nearly identical to the 2018-2019 IHA with the most significant change being an earlier in-water pile driving start date of February 15, 2020 instead of March 1, 2020. Specifically, over approximately 50 days of in-water activity a total of 59 permanent piles ranging in size from 12.75 inches to 30 inches would be installed by vibratory and impact driving. A total of 30 temporary or pre-existing piles would undergo vibratory removal. A detailed description of planned activities may be found in the **Federal Register** proposing authorization of this IHA (85 FR 2403; January 15, 2020). Therefore, a detailed description is not provided here.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to ADOT&PF was published in the **Federal Register** on January 15, 2020 (85 FR 2403). During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and Defenders of Wildlife (Defenders).

Comment 1: The Commission recommended that NMFS use at least 165 dB re 1 μ Pa while Defenders recommended use of 166 dB re 1 μ Pa rather than 157.7 dB re 1 μ Pa at 10 m as the source level (SL) for vibratory driving of 30-in steel piles at Gustavus. The Commission and Defenders recommended that NMFS re-estimate the extent of the Level A and B harassment zones as well as increase the number of Level A and B harassment takes appropriately during both impact and vibratory pile driving.

NMFS Response: As noted in responses to the comments submitted by the Commission for the previous IHAs, NMFS used a proxy source level of 157.7 dB re 1 μ Pa for vibratory driving of 30-in steel piles during the estimated take analysis. NMFS also previously noted that ADOT&PF will be using the same type of vibratory hammers at Gustavus as were used at Kake and that the pile types and sizes are comparable between the two sites. NMFS does not dispute that the SL used in the Gustavus analysis is generally lower than others that have been recorded across various sites. However, SLs for similar piles measured at different locations tend to cover a range of values. For example, SL measurements from Kodiak for vibratory driving of the same size and type of pile were even lower than those recorded at Kake, although the researchers speculated that the low values be due to the drilling/socketing of piles or sediment composition at Kodiak (Denes *et al.*, 2017). For the Gustavus analysis, NMFS elected to use a value from the lower end of recorded ranges. In order to confirm that the SLs adopted by NMFS are appropriate for use at Gustavus, NMFS will still require ADOT&PF to conduct sound source verification (SSV) testing. If the recorded SLs at Gustavus are appreciably greater than those measured at Kake, ADOT&PF will increase the shutdown and harassment zones as appropriate.

Comment 2: The Commission and Defenders recommended that NMFS require ADOT&PF to use at least three Protected Species Observers (PSOs) to monitor the full extent of the Level B harassment zones.

NMFS Response: As has been noted in the previous Gustavus IHAs, NMFS believes that the existing Level B harassment zone can be adequately measured utilizing two PSOs. The option of adding more PSOs stationed on boats or nearby islands was

originally discussed with ADOT&PF before the first IHA was issued. However, due to the frequency, severity and unpredictability of weather in Icy Passage, ADOT&PF was reluctant to employ vessels for monitoring purposes since the safety of PSOs could be at risk. Additionally, island-based PSOs could be stranded on these uninhabited islands overnight, or longer, if retrieval vessels are unable to pick up observers due to adverse weather conditions.

Comment 3: The Commission recommended that NMFS ensure that ADOT&PF keep a running tally of the total takes, both observed and extrapolated, to confirm that the numbers of authorized takes are not exceeded.

Response: We agree that ADOT&PF must ensure they do not exceed authorized takes. We have included in the authorization that ADOT&PF must include extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in the draft and final reports.

Comment 4: The Commission and Defenders recommended that NMFS require all action proponents that would be required to or propose to conduct hydroacoustic monitoring to provide their proposed hydroacoustic monitoring plans prior to publication of the proposed authorization in the **Federal Register** notice and ensure all such plans are posted on its website the day the notice publishes in the **Federal Register**.

Response: During the initial application review period, NMFS requests that applicants provide basic information regarding proposed hydroacoustic monitoring plans. We also generally ask for more fully detailed, near-final monitoring plans for review prior to publication of the final IHA. If NMFS has received the finalized monitoring plan

before publication of the final IHA, it is shared with the Commission and posted to our website. However, the MMPA does not require submission of the final monitoring plan prior to publication of the final IHA, as long as the basic plan, with sufficient details for review by NMFS and the public, is approved prior to issuance of the IHA and NMFS is kept apprised of any subsequent revisions and provided the final plan for final approval prior to the start of work. Under these conditions, NMFS indicates in the final IHA that a hydroacoustic monitoring plan must be submitted to NMFS and approved prior to initiation of the monitoring.

Note that the hydroacoustic monitoring plan for this issued IHA is currently posted on our website.

Comment 5: The Commission recommended that NMFS update templates for draft authorizations to include all the relevant minimum reporting requirements for hydroacoustic monitoring reports as described in the *Description of Mitigation, Monitoring and Reporting Measures* section consistent with the Commission's recommendations. Defenders recommended that hydroacoustic monitoring plans should incorporate the best available science.

Response: The Commission's recommendations have been included in this IHA. NMFS will consider these recommendations and ensure that templates include the appropriate minimum reporting requirements for hydroacoustic monitoring reports. NMFS also reviews every hydroacoustic monitoring plan to ensure that the most current monitoring protocols and methodologies are incorporated.

Comment 6: The Commission recommended that NMFS finish reviewing and finalize its recommended proxy source levels for both impact and vibratory installation of

the various pile types and sizes. If the proxy source levels for impact pile driving are finalized prior to those for vibratory pile driving and removal, they should be made available to action proponents and the public when completed and should not be retained until the vibratory source levels are finalized. Defenders also recommended that NMFS complete the guidance.

Response: As the Commission notes, NMFS is developing proxy source level recommendations and guidance for impact and vibratory pile driving based on all available data, and we intend to make that information available to the public as it is developed. Until that time, NMFS has advised applicants and the Commission that Caltrans 2015 represents the most complete pile driving source level compilation, and applicants should defer to these data absent any project site specific data. Once the guidance has been finalized, it will be posted on NMFS's incidental take authorization website, as appropriate.

Comment 7: The Commission has asserted in the past and continues to consider that the renewal process is inconsistent with the statutory requirements under section 101(a)(5)(D) of the MMPA. As such, the Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process. That process, as was used for ADOT&PFs proposed authorization, is similarly expeditious and fulfills NMFS's intent to maximize efficiencies.

Response 8: NMFS appreciates the streamlining achieved by the use of abbreviated **Federal Register** notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy

the Renewal requirements. However, we believe our method for issuing Renewals meets statutory requirements and maximizes efficiency, and we plan to continue considering requests for Renewals.

Comment 9: The Commission recommends that it (1) stipulate that a Renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a Renewal, (b) on its webpage detailing the Renewal process, and (c) in all draft and final authorizations that include a term and condition for a Renewal.

Response: NMFS' website indicates that Renewals are good for “up to another year of the activities covered in the initial IHA.” NMFS has never issued a Renewal for more than one year, and in no place have we implied that Renewals are available for more than one year. Any given **Federal Register** notice considering a Renewal clearly indicates that it is only being considered for one year. Accordingly, changes to the Renewal language on the website, **Federal Register** notices, or authorizations is not necessary.

Comment 10: Defenders noted that NMFS used a categorical exclusion to satisfy NEPA requirements for this action since no mortality or serious injury is expected. Defenders asserted that if no injury or mortality were expected by NMFS, there would be no need to authorize takes of several species by Level A harassment. Since NMFS has authorized take by Level A harassment mortality or injury is anticipated and, therefore, an environmental assessment should be prepared to analyze potential impacts associated with the action.

Response: NMFS does not anticipate that mortality or serious injury would occur. Defenders is using the terms injury and serious injury interchangeably. Note that NMFS

defines serious injury in regulations (50 CFR 229.2) as “any injury that will likely result in mortality,” whereas injury that will not likely result in mortality is considered “Level A Harassment.” NMFS acknowledges the possibility that a marine mammal could experience limited auditory injury in the form of permanent threshold shift (PTS), which is considered Level A Harassment. Animals that experience PTS would likely only experience minor degradation of hearing capabilities, such as the loss of a few decibels in its hearing sensitivity. In most cases such a loss is not likely to meaningfully affect the ability to forage and communicate with conspecifics. Additionally, NMFS has authorized take of marine mammals by Level A harassment for numerous pile driving actions and is unaware of any instances that resulted in mortality or serious injury of marine mammals. Therefore, NMFS determined that this action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A and that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Comment 11: Defenders expressed concern that the public comment period for this IHA closes on February 14th, 2020 and that the IHA would be effective on February 15th, 2020, there is not adequate time for NMFS to consider public input.

Response: While NMFS was targeting an issuance date of February 15th, issuance of the final IHA would be delayed, if necessary, to adequately address any comments that arrive at the end of the public comment period.

Changes from the Proposed IHA to the Final IHA

NMFS has included in the final IHA additional detail regarding hydroacoustic monitoring plan and reporting requirements for the final IHA. ADOT&PF is required to conduct monitoring of three 24-in and three 36-in piles during both impact and vibratory installation. The proposed IHA only required a single pile of each size. Updated hydroacoustic monitoring reporting requirements may be found in the *Description of Mitigation, Monitoring and Reporting Measures* section. NMFS has removed the 30-minute clearance time for cetaceans from the final IHA while retaining the standard 15-minute clearance time applicable to all marine mammals in shallow waters. NMFS has also revised the final IHA to include the most current standard marine mammal reporting requirements.

Analysis

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by ADOT&PF's planned project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, may be found in the **Federal Register** notice for the proposed IHA (85 FR 2403; January 15, 2020); as well as previous IHAs issued for this project (82 FR 17209, April 10, 2017; 83 FR 55348, November 5, 2018). We are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in these previous documents. There is no new

information on potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the 2020-2021 IHA are identical to those used in the 2017-2018 IHA. The source levels also remain unchanged from the previously issued IHAs. Observational data was used to calculate daily take rates in the absence of density data. Since the number of pile-driving days (50) estimated for the 2017-2018 IHA, 2018-2019 IHA and 2020-2021 IHA remains the same, the total estimated take projections will be identical. Note that marine mammal occurrences are more frequent in the late spring near the Gustavus ferry terminal. Moving the start date forward by two weeks will reduce the amount of in-water construction occurring later in the spring when animal occurrences are elevated. Therefore, the total recorded take amounts may be reduced. Note that since abundance estimates of some stocks have been updated in the Draft 2019 SAR (Muto *et al.* 2019b) the percentage of stock taken has also changed. These changes are shown in Table 1.

Table 1. Estimated Number of Instances of Exposures that May Be Subject to Level A and Level B Harassment and Percentage of Stocks

| Species | Level A Authorized Takes | Level B Authorized Takes | Total Authorized Takes | Stock(s) Abundance Estimate | Instances of Take as a Percentage of Total Stock |
|------------------|--------------------------|----------------------------|----------------------------|--|--|
| Steller Sea Lion | 0 | 709 | 709 | 53,624 (western distinct population segment in Alaska)/ 43,201 (eastern stock) | 1.3*/ 1.6* |
| Humpback whale | 0 | 600/ (36 ¹) | 600/ (36 ¹) | 10,103 (Central North Pacific Stock)/3,264 (Mexico DPS) | 5.9/1.1 |
| Harbor Seal | 38 | 616 | 654 | 7,455 (Glacier) | 8.7* |

| | | | | | |
|-----------------|----|-----|-----|---|-----------------------|
| | | | | Bay/Icy Strait) | |
| Harbor Porpoise | 26 | 127 | 153 | 11,146 (Southeast Alaska) | 1.37 |
| Killer whale | 0 | 126 | 126 | 302 (Northern resident)/ 587 (Gulf of Alaska transient)/ 243 (West Coast transient) | 41.7* 21.4 51.8 |
| Minke whale | 0 | 42 | 42 | Unknown | Unknown |
| Dall's Porpoise | 7 | 35 | 42 | 83,400 | <0.01 |

¹6.1 percent of humpbacks whales in southeast Alaska (36) are from Mexico DPS (Wade *et al.* 2016).

* Updated information from Muto *et al.* 2019. Draft Alaska Marine Mammal Stock Assessments, 2019. Available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>.

Description of Mitigation, Monitoring and Reporting Measures

A description of required mitigation, monitoring, and reporting measures is found in the previous documents, which are nearly identical to those contained in this 2020-2021 IHA. The following measures apply to ADOT&PF's mitigation requirements:

1. *Implementation of Shutdown Zone*—For all pile driving activities, ADOT&PF will implement a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones (Table 2) are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for some authorized species, based on NMFS' acoustic technical guidance (NMFS 2018).

2. *Implementation of Monitoring Zones*—ADOT&PF must monitor Level A harassment zones as shown in Table 2. These zones are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in PTS. ADOT&PF must also monitor the Level B harassment disturbance zones as shown in Table 4 which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity, and also allows for the collection of marine

mammal and effects data. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (82 FR 17209; April 10, 2017) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in the issued 2020-2021 IHA.

Table 2. Shutdown, Injury and behavioral Harassment Isopleths from Impact and Vibratory Pile Driving

| Species | Shutdown Zone – Impact /Vibratory | Level A Harassment Zone – Impact | Level B Harassment Zone - Impact/Vibratory |
|------------------|-----------------------------------|----------------------------------|--|
| Steller Sea Lion | 25/10 m | n/a | 2,090/3,265 m |
| Humpback whale | 550/20 m | n/a | 2,090/3,265 m |
| Harbor Seal | 100/10 m | 285 m | 2,090/3,265 m |
| Harbor Porpoise | 100/20 m | 630 m | 2,090/3,265 m |
| Killer whale | 25/10 m | n/a | 2,090/3,265 m |
| Minke whale | 550/20 m | n/a | 2,090/3,265 m |
| Dall’s Porpoise | 100/20 m | 630 m | 2,090/3,265 m |

3. *Temporal and Seasonal Restrictions*—Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted and all in-water construction will be limited to the periods February 15 through May 31, 2020, and September 1 through November 30, 2020.

4. *Soft Start*—The use of a soft-start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft Start is not required during vibratory pile driving and removal activities.

5. *Visual Marine Mammal Observation*— Visual monitoring must be conducted by qualified PSOs. In order to effectively monitor the pile driving monitoring zones, two PSOs must be positioned at the best practical vantage point(s). If waters exceed a sea-state which restricts the observers' ability to make observations within the shutdown zone (*e.g.*, excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. PSOs shall record specific information on the sighting forms as described in this issued IHA which contains current standards. At the conclusion of the in-water construction work, ADOT&PF will provide NMFS with a

monitoring report, which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

6. ADOT&PF must conduct SSV testing of impact and vibratory pile driving for this project within 7 days after underwater pile driving work is initiated. ADOT&PF is required to conduct monitoring of three 24-in and three 36-in piles during both impact and vibratory installation according to methodology described in hydroacoustic monitoring plan. The SSV testing must be conducted by an acoustical firm with prior experience conducting SSV tests in Alaska. Results must be sent to NMFS no later than 14 days after field testing has been completed. If necessary, the shutdown, Level A, and Level B harassment zones will be adjusted to meet MMPA requirements within 7 days of NMFS receiving results. The following data, which was not included in the draft IHA, must be collected during acoustic monitoring and reported:

- a) Hydrophone equipment and methods: recording device, sampling rate, distance from the pile where recordings were made; depth of recording device(s);
- b) Type of pile being driven, method of driving, and use of bubble curtain or other noise abatement device (*e.g.*, driving behind the cofferdam) during recordings;
- c) Mean, medium, and maximum sound levels (dB re: 1 μ Pa): cumulative sound exposure level (SEL_{cum}), peak sound pressure level (SPL_{peak}), root mean square sound pressure level (SPL_{rms}), and single-strike sound exposure level (SEL_{s-s}); and
- d) Number of strikes per pile measured, one-third octave band spectrum and/or power spectral density.

Determinations

ADOT&PF plans to conduct activities similar to those covered in the previous 2017-2018 and 2018-2019 IHAs. As described above, the number of estimated takes of the same stocks of marine mammals are the same as those authorized in the 2017-2018 and 2018-2019 IHAs that were found to meet the negligible impact and small numbers standards. Our analysis showed that less than 9 percent of the populations of affected

stocks, with the exception of minke and killer whales, could be taken by harassment. For Northern resident and West Coast transient killer whales, the percentages, when instances of take are compared to abundance, are 41.7 percent and 51.8 percent, respectively. However, the takes estimated for these stocks (up to 126 instances assuming all takes are accrued to a single stock) are not likely to represent unique individuals. Instead, we anticipate that there will be multiple takes of a smaller number of individuals and that the total number of individuals will fall below one third of the abundance.

The Northern resident killer whale stock are most commonly seen in the waters around the northern end of Vancouver Island, and in sheltered inlets along British Columbia's Central and North Coasts. They also range northward into Southeast Alaska in the winter months. Pile driving operations are not permitted from December through February. It is unlikely that such a large portion of Northern resident killer whales with ranges of this magnitude would be concentrated in and around Icy Passage, which is a shallow, narrow channel connected to the deeper waters of Icy Strait and separates Gustavus and the rest of the mainland from Pleasant Island.

NMFS believes that small numbers of the West coast transient killer whale stock would be taken based on the limited region and duration of exposure in comparison with the known distribution of the transient stock. The West coast transient stock ranges from Southeast Alaska to California, while the planned project activity would be stationary. A notable percentage of West coast transient whales have never been observed in Southeast Alaska. Only 155 West coast transient killer whales have been identified as occurring in Southeast Alaska according to Dahlheim and White (2010). The same study identified three pods of transients, equivalent to 19 animals that remained almost exclusively in the

southern part of Southeast Alaska (*i.e.* Clarence Strait and Sumner Strait). This information indicates that only a small subset of the entire West coast Transient stock would be at risk for take in the Icy Passage area because a sizable portion of the stock has either not been observed in Southeast Alaska or consistently remains far south of Icy Passage.

There is no current abundance estimate for minke whale since population data on this species is dated. However, the authorized take of 42 minke whales may be considered small. A visual survey for cetaceans was conducted in the central-eastern Bering Sea in July-August 1999, and in the southeastern Bering Sea in 2000. Results of the surveys in 1999 and 2000 provide provisional abundance estimates of 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively (Moore *et al.*, 2002). Additionally, line-transect surveys were conducted in shelf and nearshore waters in 2001-2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 for this area (Zerbini *et al.*, 2006). However, these estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. (Allen and Anglis, 2012). Clearly, 42 authorized takes should be considered a small number, as it constitutes only 5.2 percent of the smallest abundance estimate generated during the surveys just described and each of these surveys represented only a portion of the minke whale range.

Note that the numbers of animals authorized to be taken for all species, with the exception of Northern resident and West coast transient killer whales, would be

considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

The issued 2020-2021 IHA includes mitigation, monitoring, and reporting requirements that are nearly identical to those depicted in the 2017-2018 and 2018-2019 IHAs, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF'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

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for

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

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.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion on March 21, 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA. This consultation concluded that the project was likely to adversely affect but unlikely to jeopardize the continued existence of the threatened Mexico DPS of humpback whale (*Megaptera novaeangliae*) or the endangered western DPS of Steller sea lion (*Eumatopias jubatus*), or adversely modify designated critical habitat for Steller sea lions. In a memo dated January 7, 2020 NMFS AKR concluded that re-initiation of section 7 consultation was not necessary for the issuance of the 2020-2021 IHA and extended the Gustavus incidental take statement (ITS). All of the terms and conditions listed in the ITS issued March 21, 2017 still apply to this action.

Authorization

As a result of these determinations, we have issued an IHA to ADOT&PF for conducting the described construction activities related to city dock and ferry terminal improvements from February 15, 2020 through February 14, 2021, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 18, 2020.

Donna Wieting,

Director,

Office of Protected Resources,

National Marine Fisheries Service.

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