



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XA623

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 Renewal 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 a Renewal incidental harassment authorization (IHA) to the Port of Kalama (POK) to incidentally harass marine mammals incidental to construction activities associated with an expansion project at the POK on the Lower Columbia River, Washington.

DATES: This Renewal IHA is valid from November 23, 2020 through October 18, 2021.

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

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-

year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the notice of proposed IHA for the initial IHA, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:
 - (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
 - (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.

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 (*Phoca vitulina*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*)). 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 15064). 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). On November 13, 2018, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Port of Kalama Expansion Project (83 FR 56304). The effective dates of that IHA were October 18, 2018 through October 18, 2019.

On August 21, 2019, POK informed NMFS that the project had been delayed by one year. None of the work identified in the IHA (*i.e.* pile driving and removal) had occurred and no take of any marine mammals had occurred since the effective date of the initial IHA. POK submitted a formal request for an identical IHA, but with modified effective dates, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. On October 17, 2019, NMFS issued an IHA to POK to take marine mammals incidental to construction activities at the Port of Kalama (84 FR 57013; October 24, 2019), effective from October 19, 2019 through October 18, 2020 (hereafter referred to as the initial IHA).

On August 27, 2020, NMFS received an application for the Renewal of that initial IHA. As described in the request for the Renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization. In order to consider an IHA Renewal, NMFS requires the applicant provide a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

As no construction activities have been conducted, POK has no monitoring results to report. NMFS has determined that POK's proposed activities (including mitigation, monitoring, and reporting), estimated incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the initial IHA.

Description of the Specified Activities and Anticipated Impacts

POK's planned activities include 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. Specifically, the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the original IHA.

Similarly, the anticipated impacts are identical to those described in the initial IHA. NMFS anticipates the take of three species of marine mammals (Pacific harbor seals, California sea lions, and Steller sea lions) by Level A and Level B harassment incidental to underwater noise resulting from construction associated with the proposed activities.

The following documents are referenced in this notice and include important supporting information:

- Initial reissued IHA (84 FR 57013; October 24, 2019);
- Initial final IHA (83 FR 56304; November 13, 2018);
- Initial proposed IHA (83 FR 40257; August 14, 2018);
- 2017 final IHA (81 FR 89436; December 12, 2016);
- 2017 proposed IHA (81 FR 15064; March 21, 2016); and
- 2017 and 2018 IHA applications, references cited, and previous public comments received (available at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>).

Detailed Description of the Activity

POK is planning to construct 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 8 engineered log jams, 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 320 untreated wooden piles from an abandoned U.S. Army Corps of Engineers (USACE) dike 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.

A detailed description of the construction activities for which take is authorized may be found in the **Federal Register** notice of proposed IHA for the 2017 authorization (81 FR 15064; March 21, 2016). As stated above, location, timing (*e.g.*, seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those analyzed in the initial IHA. The IHA Renewal is effective from the date of issuance (November 23, 2020) to October 18, 2021 (*i.e.*, one year after the expiration of the initial IHA).

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notices for the proposed IHA for the initial

authorization (83 FR 40257; August 14, 2018) and 2017 IHA (81 FR 15064; March 21, 2016). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2019 Stock Assessment Report notes the estimated abundance of the Eastern U.S. stock of Steller sea lions has decreased slightly. However, NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized may be found in the **Federal Register** notices for the proposed initial IHA (83 FR 40257; August 14, 2018) and 2017 IHA (81 FR 15064; March 21, 2016). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices for the proposed initial IHA (83 FR 40257; August 14, 2018) and 2017 IHA (81 FR 15064; March 21, 2016). Specifically, the source levels, days of operation, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1. The estimated abundance of Steller sea lions has decreased from that described in the initial IHA (Muto *et al.*, 2020), therefore the percent of stock proposed to be taken has

increased.

Table 1. Authorized Take and Proportion of Population Potentially Affected

| | Authorized Take by Level B harassment | Authorized Take by Level A harassment | Stock | Abundance of Stock | Percentage of stock potentially affected |
|---------------------|----------------------------------------------|----------------------------------------------|-------------------------|---------------------------|-------------------------------------------------|
| Harbor seal | 1,530 | 10 | Oregon/Washington Coast | 24,732 | 6.2 |
| California sea lion | 372 | 0 | U.S. | 153,337 | 0.2 |
| Steller sea lion | 372 | 0 | Eastern U.S. | 43,201 | 0.86 |

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (83 FR 56304; November 13, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are included in this Renewal:

Mitigation Requirements

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 meters (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).

Pile driving activities must only be conducted during daylight hours. If the shutdown zone is obscured by fog or poor lighting conditions, pile driving must 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 must 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 must 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 ft 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.

Monitoring Requirements

At least three NMFS-approved 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. Observers must immediately inform other observers and construction personnel of all marine mammal sightings.

Reporting Requirements

POK must provide NMFS with a draft monitoring report within 90 calendar days of the expiration of the IHA, or within conclusion of the construction work, whichever comes first. If comments are received from NMFS on the draft report within 30 days, a final report must be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS within 30 days after receipt of the draft report, the draft report will be considered final. The monitoring report must include the following elements:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, impact or vibratory);
- Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
- Number of individuals of each species detected within the monitoring zone(s), and estimates of the number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone, the portion of the Level B harassment zone that was not visible during monitoring, and amount of time monitors were not present during vibratory installation or removal.

POK must also submit all PSO datasheets and/or raw sighting data (in a separate file from the final report).

In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury, or mortality (Level A take), POK must immediately cease all operations and immediately report the incident to the NMFS Office of Protected Resources and the NMFS West Coast Regional Stranding Coordinator. The report must include the following information:

1. Time, date, and location (latitude and longitude) of the incident;
2. Description of the incident;
3. Status of all sound sources used in the 24 hours preceding the incident;
4. Environmental conditions (wind speed, wind direction, sea state, cloud cover, visibility, water depth);
5. Description of the marine mammal observations in the 24 hours preceding the incident;
6. Species identification or description of the animal(s) involved;
7. The fate of the animal(s); and
8. Photographs or video footage of the animal(s), if equipment is available.

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with POK to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. POK may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that POK discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of injury or death is unknown and the death is relatively recent (less than a moderate state of decomposition), POK must immediately report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with POK to determine whether modifications in the activities are appropriate.

In the event that POK discovers an injured or dead marine mammal, and the marine mammal observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), POK must report the

incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator within 24 hours of the discovery. POK must provide photographs or video footage (if available) or other documentation of the stranded animal(s) to NMFS Office of Protected Resources and the West Coast Regional Stranding Coordinator. POK may continue its operations under such a case.

Public Comments

A notice of NMFS' proposal to issue a Renewal IHA to POK was published in the Federal Register on October 21, 2020 (85 FR 66957). That notice either described, or referenced descriptions of, POK's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received a comment letter from the Marine Mammal Commission (Commission). The comments and our responses are summarized below.

Comment 1: The Commission reiterated a comment made on the initial 2018 IHA regarding the estimation of the Level A harassment zones and recommended 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 piles driven per 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 addressed this comment in the **Federal Register** notice announcing the issuance of the initial 2018 IHA (83 FR 56304; November 13, 2018). 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 initial 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 did not change as a result of reconsidering the Level A harassment zone and only resulted in a revision of the Level A harassment monitoring area. The required shutdown distances to avoid Level A harassment take are 63 m and 26 m, which correspond to a two-hour duration for impact driving of concrete piles and vibratory driving of steel piles, respectively.

Comment 2: The Commission also reiterated their recommendation that NMFS investigate the appropriate timeframes over which sound exposure levels should be accumulated when estimating the extents of the Level A harassment zones. In the absence of relevant recovery time data for marine mammals, the Commission believes that animal modeling that considers various operational and animal scenarios should be used to inform the appropriate accumulation time and could be incorporated into NMFS's acoustic guidance user spreadsheet that currently estimates the Level A harassment zones. The Commission recommended NMFS prioritize this issue in the near future and consider incorporating animal modeling into the user spreadsheet.

Response: NMFS appreciates the Commission's recommendations. As noted by the Commission, NMFS has formed an internal committee to address this issue and has consulted with external acousticians and modelers. NMFS continues to work on improving the user spreadsheet and looks forward to sharing our progress in the future.

Comment 3: The Commission noted that the draft IHA Renewal did not specify what specific information POK would be required to include in its monitoring report and recommended NMFS revise the authorization such that the reporting requirements are consistent with recently issued IHAs.

Response: NMFS agrees with the Commission's recommendations and has revised the authorization to specify the information that must be included in POK's monitoring report (see *Description of Mitigation, Monitoring and Reporting Measures* section of this notice).

Comment 4: The Commission recommended NMFS reinforce the need for POK to keep a running tally of the total takes by Level B harassment based on observed and extrapolated takes to ensure that POK does not exceed the authorized number of takes.

Response: The IHA indicates the number of takes authorized for each species. We agree that POK must ensure they do not exceed authorized takes, and further note that they are required to report "an extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone, the portion of the Level B harassment zone that was not visible during monitoring, and amount of time monitors were not present during vibratory installation or removal."

Comment 5: The Commission recommended NMFS refrain from issuing a Renewal for any authorization unless it is consistent with the procedural requirements specified in section 101(a)(5)(D)(iii) of the MMPA.

Response: In prior responses to comments about IHA Renewals (*e.g.*, 84 FR 52464; October 02, 2019 and 85 FR 53342; August 28, 2020), NMFS has explained how

the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

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 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA Renewal qualifies to be categorically excluded from further NEPA review.

Determinations

The construction activities planned by POK are identical to those analyzed in the initial IHA, as are the planned number of days of activity, the method of taking, and the effects of the action. The potential effects of POK's activities are limited to Level A and Level B harassment in the form of auditory injury and behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMSF determined that POK's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant

stocks (*e.g.*, less than seven percent of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA. NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the Eastern U.S. stock of Steller sea lions decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the 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; (4) 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, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

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

Renewal

NMFS has issued a Renewal IHA to POK for the take of marine mammals incidental to conducting in-water construction activities associated with the POK Expansion Project on the Lower Columbia River, Washington, from November 23, 2020 through October 18, 2021.

Dated: November 24, 2020.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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