



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XA962]

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska**

**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 Alaska Department of Transportation and Public Facilities (ADOT&PF) to incidentally harass marine mammals incidental to Phase I of the two-part ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK.

**DATES:** This authorization is effective from date of issuance through February 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dwayne Meadows, Ph.D., 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 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 proposed 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 1 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 activities as described in the Detailed Description of Specific Activity section of the initial IHA issuance notice is planned or (2) the activities as described in the Detailed Description of Specific Activity section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA issuance notice, provided all of the following conditions are met:

(1) 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);

(2) The request for renewal must include the following:

- 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

- 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; and

(3) 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](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals)*.

### **History of Request**

On March 1, 2020, NMFS issued two, consecutive IHAs to ADOT&PF to take marine mammals incidental to Phase I and II activity related to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK (85 FR 673; January 7, 2020), the first one (for Phase 1) effective from March 1, 2020 through February 28, 2021. On December 28, 2020, NMFS received an application for the Renewal of the initial Phase I IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested consist of activities that were covered by the initial Phase I authorization but were not completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *<https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>*) 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. The notice of the proposed Renewal incidental harassment authorization was published on March 5, 2021 (86 FR 12918).

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

ADOT&PF's planned construction activities includes a subset of the work activities under the 2020 initial IHA (Phase I) on the ferry berths in Tongass Narrows. The project is comprised of four permanent project components, identical to those described in the initial IHA: new Revilla ferry berth, new Gravina Island Shuttle Ferry

Berth and Terminal Improvements, Gravina Airport Ferry Layup Facility, and the Gravina Freight.

This project will improve the reliability of the transportation system as well as access to Gravina Island and Ketchikan International Airport. This renewal authorization allows the completion of Phase I activities beyond the initial IHA's expiration, February 28, 2021.

ADOT&PF's renewal request initially included one minor change to the specified activity described in the initial IHA (other than the removal of the activities that have already been completed), specifically, the request described a higher maximum number of piles that may be installed per day via impact and vibratory driving (up from a max of three to eight piles). Following consideration of comments from the Marine Mammal Commission (MMC) during the public comment period as discussed below, we determined that the request to increase the number of piles that may be installed per day via impact and vibratory driving from a max of three to eight piles does not meet the requirements of a Renewal IHA described above and ADOT&PF withdrew their request to make this change on April 16, 2021.

As described in the proposed Renewal, we noted a small increase in the number of days of temporary pile driving work that it took to complete the work that occurred at one site under the initial IHA. However, that change does not affect or change the previous analysis of the temporary pile driving work to be conducted at the remaining three sites under this Renewal.

Regarding the analysis of impacts, NMFS identified two changes in NMFS' recommended methods (not the applicant's activity) since the initial IHA that neither change the determinations nor change the take estimates in a manner such that they exceed those analyzed and authorized by the initial IHA. First, as noted by the MMC during the public comment period (see below), NMFS has updated its analytical method

for assessing the impacts of down-the-hole (DTH) pile installation since the initial IHA was issued and newer methods were not applied in the proposed Renewal. While applying the alternative method would result in somewhat larger Level A harassment zones, as described below, a re-analysis of this activity under the alternative approach is not necessary or warranted in this situation, and therefore does not affect the analysis or findings from the initial IHA or the Renewal conditions being met.

Second, as previously described in the proposed Renewal, the driving of DTH holes for one of the structures (tension anchors) utilized in the applicant's activity and described in the initial IHA, was initially assessed by the applicant and NMFS as unlikely to result in the take of marine mammals because of the size of the holes, which are smaller than the holes for the structures specifically associated with take in the initial IHA (rock sockets). However, new sound source measurement data indicate source levels from DTH driving of tension anchors high enough to potentially result in the take of marine mammals. Accordingly, take from DTH driving of tension anchors is appropriately characterized and quantified the same as the DTH driving for rock sockets addressed in the initial IHA (though impacts are thought to be less, given the small size of the holes, which are 6-8 inches, as opposed to the smallest 24-in rock socket). Take in the initial IHA and Renewal IHA is estimated based on days of in-water work. Some of the driving days used to calculate take in the initial IHA included DTH for tension anchors, but where DTH drilling of tension anchors may occur on days without other driving, driving days have been added in the Renewal. Nonetheless, the total days of driving under the Renewal are still fewer than the total days of driving under the initial IHA, tension anchor driving activity was discussed in the initial IHA, quantitatively the impacts on marine mammals under the Renewal are less than those from the rock socket DTH under the initial IHA, and the mitigation for DTH remains the same and appropriate.

In summary, the activity is identical to the initial IHA and includes four methods of pile installation: vibratory and impact hammers, DTH holes created for rock sockets for the piles and smaller DTH holes for the installation of tension anchors at some locations (see Tables 1 and 2). Moreover, Phase II activities will only begin upon the completion of Phase I, as stated in the 2020 initial IHA and proposed renewal (so there will be no overlap between the remaining Phase I activities under the Renewal IHA and the Phase II activities).

The amount of take requested for the Renewal IHA reflects the amount of remaining work under Phase I, the methods in the initial IHA (which remain appropriate for this Renewal), and consideration of marine mammal monitoring data from the 2020 construction activities indicating detection of notably fewer marine mammals within harassment zones than were authorized to be taken in the initial IHA. The potential effect of ADOT&PF's activities is to take a small number of eight species of marine mammals (Steller sea lion, harbor seal, harbor porpoise, Dall's porpoise, Pacific white-sided dolphin, killer whale, humpback whale, and minke whale) by Level B harassment and three (harbor seal, harbor porpoise, and Dall's porpoise), by Level A harassment incidental to underwater noise resulting from construction associated with the planned activities.

#### *Detailed Description of the Activity*

As discussed earlier, this is a Renewal to complete the subset of the activity not completed under the initial IHA (85 FR 673; January 7, 2020). Due to construction schedule delays, designated work was only conducted on 56 of the estimated 101 days of the initial IHA. ADOT&PF installed 11 temporary piles (of which one has already been removed) and 41 permanent piles over approximately 23 construction days in 2020. As of the submission of their Renewal request, ADOT&PF expected to drive pile for 40 more days and complete installation of 27 24-inch trestle piles, 5 24-inch bridge abutment

piles, 15 24-inch floating fender dolphin piles, 27 remaining sheet piles, and 10 30-inch steel float piles for the Revilla New Ferry Berth and Upland Improvements between January 4 and February 28, 2021 under the 2020 initial IHA.

As of February 2, 2021, the following work remains to be completed during the one-year 2021 Renewal IHA: installation of 192 piles, 73 rock sockets, and 78 tension anchors and installation (38) and removal (40) of temporary piles. This work is expected to take no more than 90 days of in-water piling activities. Although some work may have been completed between February 2 and the expiration of the initial IHA (February 28), the applicant requested authorization for the work remaining as of February 2 outlined in Tables 1 and 2. The Renewal IHA will be effective through February 28, 2022.

The effects of DTH driving were fully assessed in the initial IHA. At the time the initial IHA analysis was conducted, the DTH driving of the relatively smaller holes for tension anchors was described, but was not anticipated to produce sound levels that would result in the incidental take of marine mammals. However, NMFS' consideration of new monitoring data from the White Pass & Yukon Route project (Reyff, 2020) now suggests that sound levels from the DTH driving of the 6 to 8-inch holes for these particular structures may be high enough to result in take, and the take estimate in this Renewal considers this, as described above.

Regarding the number of days of temporary pile driving, the initial IHA application specified 7-11 total days of temporary pile driving would be needed to complete all projects during Phase I. The temporary pile driving at the Revilla New Ferry Berth required 7 days, instead of the 2-3 days listed in the IHA application, because of subsurface boulders and weather conditions. It is expected that, therefore, more total days than initially anticipated will be needed to complete the temporary pile driving over the entire Phase I period. However, the renewal application describes 5-8 days of temporary



pile installation to complete the three remaining component projects, which is identical to what was described in the initial IHA.

Considering the information above, the total number of days of pile driving remaining (90) under the Renewal IHA is still fewer than included in the initial IHA (101).

The mitigation and monitoring will be identical to that of the 2020 initial IHA, with the indicated mitigation for the DTH driving of 24-in piles applied to DTH driving of the smaller tension anchors. A detailed description of the construction activities may be found in the notices of the proposed (84 FR 34134; July 17, 2019) and final initial IHAs (85 FR 673; January 7, 2020). All documents associated with the 2020 initial IHA (*i.e.*, the IHA application, proposed IHA, final IHA, public comments, monitoring reports, etc.) can be found on NMFS's website, <https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>.

**Table 1. Permanent Pile Details and Estimated Effort Required for Pile Installation During 2021 Renewal**

Project Component  Pile Type	Number of Piles	Number of Rock Sockets	Number of Tension Anchors	Average Vibratory Duration Per Pile (minutes)	Average Strikes Per Pile for DTH for Rock Sockets and Tension Anchors	Impact Strikes Per Pile	Average Duration (minutes) per pile for vibratory	Average Piles per Day (Range)	Days of Installation
Revilla New Ferry Berth and Upland Improvements									
24" Pile Diameter	15	0	12	30	N/A	200	30	1.5 (1-3)	36
30" Pile Diameter	2	0	14	30	N/A	200	30	1.5 (1-3)	12
30" Sheet Pile	0	Completed	-	-	-	-	-	-	-
New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements									
24" Pile Diameter	65	52	25	15	25,000	50	15	1.5 (1-3)	44
30" Pile Diameter	8	4	4	15	25,000	50	15	1.5 (1-3)	5
27.6" Sheet Pile	74	N/A	N/A	15	N/A	N/A	15	6 (6-12)	12
Gravina Airport Ferry Layup Facility									
18" Pile Diameter	3	0	0	15	N/A	50	15	1.5 (1-3)	2
30" Pile Diameter	12	12	10	15	25,000	50	15	1.5 (1-3)	8
Gravina Freight Facility									
20" Pile Diameter	6	0	6	15	N/A	50	15	1.5 (1-3)	4
24" Pile Diameter	3	3	3		25,000	50	15	1.5 (1-3)	2
30" Pile Diameter	4	2	4	15	25,000	50	15	1.5 (1-3)	3
PHASE I TOTAL	192	73	78						128 <sup>a</sup>
<sup>a</sup> Identically to the initial IHA, the assumption that two pieces of equipment are to be used concurrently on 30 percent of planned driving days reduces in-water construction to 90 days.									

**Table 2. Numbers of Temporary Piles Planned to be Installed and Removed for each Project Component in 2021**

Project Component	Number of Temporary Piles	Average Vibratory Duration Per Pile for Installation (minutes)	Average Vibratory Duration Per Pile for Removal (minutes)	Days of Installation	Days of Removal	Piles per Day
Revilla New Ferry Berth and Upland Improvements	8	0-currently installed	15	0	2 to 3	4 to 6
New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements	12	15	15	2 to 3	2 to 3	4 to 6
Gravina Airport Ferry Layup Facility	8	15	15	1 to 2	0.75 to 2	4 to 6
Gravina Freight Facility	12	15	15	2 to 3	2 to 3	4 to 6
TOTAL	40	480 (8 hrs)	600 (10 hrs)	5-8	7-11	

### *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 of the proposed (84 FR 34134; July 17, 2019) and final (85 FR 673; January 7, 2020) IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events, and other scientific literature. As discussed in the notice of the proposed renewal, the 2020 SARs indicated the estimated abundance of the West Coast Transient and Northern Resident Killer whale stocks and Steller sea lion Eastern U.S. stock have increased slightly, whereas the Clarence Strait harbor seal stock decreased slightly. However, we have determined that neither the above, 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 sections 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 of the proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, 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. The applicant submitted the required preliminary monitoring results and the monitoring to date does not contradict the original take calculations or indicate impacts of a scale or nature not previously analyzed or authorized.

### *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 of the proposed (84 FR 34134; July 17, 2019) and final (85 FR 673; January 7, 2020) IHAs for the initial authorization. Specifically, the days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA, with the exception of the fact that there are fewer days of operation since this activity is a subset of that covered in the initial IHA. Only the inclusion of the DTH driving of tension anchors (which was described in the initial IHA) as a potential source of take has changed, but this is not outside the scope of what was previously analyzed in the initial IHA. Specifically, the take from DTH driving of these structures is calculated identically to that of the 24-inch DTH driving (though the holes and impacts are smaller), the number of total driving days (90) is fewer than the initial IHA (101), and the authorized take does not exceed that included in the initial IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

The rationale and take estimates presented in the initial proposed IHA (which were based on the likelihood of an individual or group entering the area some number of times during the activity, as opposed to being based on a species' density) remain applicable (Table 3). Further, the marine mammal detections reported in the preliminary monitoring report, which were very low as compared to the number authorized in relation to the activities conducted, do not suggest impacts of a scale or nature not previously analyzed or authorized.

**Table 3. Take Numbers to be Authorized by Species/Stock**

Species	DPS/Stock	Estimated Number of Exposures to Level B Harassment	Estimated Number of Exposures to Level A Harassment	Total Estimated Exposures (Level A and Level B Harassment)
Steller sea lion	Eastern DPS	1,800	0	1,800
Harbor seal	Clarence Strait	765	18	783
Harbor porpoise	Southeast Alaska	109	15	124
Dall's porpoise	Alaska	317	15	332
Pacific white-sided dolphin	North Pacific	92	0	92
Killer whale	Alaska Resident	144	0	144
	Northern Resident			
	West Coast Transient			
Humpback whale <sup>1</sup>	Hawaii DPS	238	0	238
	Mexico DPS	15	0	15
Minke whale	Alaska	7	0	7
Note: DPS = distinct population segment.				
<sup>1</sup> Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade <i>et al.</i> 2016).				

### *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 (with minor clarifications on DTH terminology and applicability of terms to DTH driving where it was previously unclear), and the same mitigation identified for DTH drilling of 24-inch rock sockets will be applied to the DTH driving of the smaller (6-8-inch) tension anchors. The discussion of the least practicable adverse impact included in the notices of the proposed initial IHA (84 FR 34134; July 17, 2019) and issuance of the initial IHA remains accurate. As noted previously, the applicant withdrew the request to increase the maximum number of piles per day from three to eight, so the discussion of increased Level A zones in the proposed Renewal no longer applies.

### **Mitigation Measures**

The following measures are included in this renewal:

- Conduct briefings between construction supervisors and crews and the monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving/removal and drilling (*e.g.*, use of barge-mounted excavators, or dredging), 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. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.*, stabbing the pile);
- Work must only occur during daylight hours, when visual monitoring of marine mammals can be conducted;

- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal and drilling will shut down immediately when the animals are sighted; and
- If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

*Establishment of Shutdown Zone for Level A Harassment*—For all pile driving/removal and DTH activities, ADOT&PF will establish 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 within the zone (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type, marine mammal hearing group, and in the case of impact pile driving, additional details about the activity including the expected number of pile strikes required, size of the pile, and number of piles to be driven during that day (See Table 4). The placement of protected species observers (PSOs) during all pile driving, pile removal, and drilling activities will ensure that the entire shutdown zone is visible during pile installation.

The shutdown zones shown in Table 4 apply when a single piece of equipment is in use. In addition, ADOT&PF will implement a shutdown zone of 100 m for each vibratory hammer on days when it is anticipated that multiple vibratory hammers will be used.



**Table 4. Shutdown Zones During use of a Single Piece of Equipment**

Activity	Pile or Hole Size (inches)	Minutes per Pile or Strikes per Pile	Piles Installed or Removed per Day	Level B Harassment Isopleth (m)	Shutdown Distances (m)				
					LF	MF	HF	PW	OW
Vibratory Installation	30	30 min	3	6,310	50				
	24, 18	30 min	3	5,420					
	27.6 sheet pile, 30.3 sheet pile	15 min	10	4,650					
Vibratory Removal	24, 16	30 min	5	5,420					
DTH Rock Sockets and Tension Anchors	30	25,000 strikes	3	12,030	70	50	60	50	50
	24, 8	25,000 strikes	3		60	50	50	50	50
Impact Installation	30	50 strikes	3	2,160	250	50	250	150	50
			2		200		200	100	
			1		100		150	100	
		200 strikes	3		550		650	300	
			2		400		500	250	
			1		300		300	150	
	24	50 strikes	3	1,000	150		150	100	
			2		100		150	50	
			1		100		100	50	
		200 strikes	3		300		350	200	
			2		250		300	150	
			1		150		200	100	
	18	50 strikes	3	150	150		100		
			2	100	150		50		
			1	100	100		50		

*Establishment of Monitoring Zones for Level B Harassment*—ADOT&PF will establish monitoring zones (see Table 3 of the initial final IHA and proposed Renewal IHA), based on the Level B harassment zones which are areas where sound pressure levels (SPLs) are equal to or exceed the 160 dB rms (decibel root mean square) threshold for impact driving and the 120 dB rms threshold during vibratory driving, vibratory removal, and DTH. Monitoring zones provide utility for observing marine mammals by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. On days and at times when a single piece of pile installation or removal equipment will be used, the Level B harassment zone will be monitored and implemented according to pile size, type, and installation method. The largest Level B harassment zone extends to a radius of 12,023 m in at least one direction up or down Tongass Narrows when a single piece of driving equipment is being utilized, making it impracticable for the PSOs to consistently view the entire harassment area. Due to this, detections of exposures above the Level B harassment thresholds will be recorded and takes will be estimated based upon the number of these observed detections and the percentage of the Level B harassment zone that was not visible.

When two or more pieces of equipment are used simultaneously, and the noise they produce is not continuous or is a combination of continuous and impulsive, Table 4, above, will be followed to define the Level A and Level B harassment monitoring zones for each piece of equipment.

On days when multiple pieces of equipment that produce continuous noise are used simultaneously, source levels will be determined as shown in Table 9, Table 10, Table 11, and Table 12 of the initial final IHA (85 FR 673; January 7, 2020) with the resulting harassment zones being defined in Table 4 of the final initial IHA and proposed

Renewal IHA. The calculated source level will be used to determine the Level B harassment monitoring zones in accordance with values depicted in Table 14 of the initial final IHA (85 FR 673; January 7, 2020). The assumption stands that a minimum of two pieces of equipment will be used on 30 percent of construction days; therefore, decreasing the total number of pile installation days from 128 to 90 days as well as the number of days when the Level B harassment zone size could exceed 12,023 m.

*Soft Start* - The use of a soft-start procedure provides 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 provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving and removal activities. If a marine mammal is present within the Level A harassment zone, soft start will be delayed until the animal leaves the Level A harassment zone. Soft start will begin only after the PSO has determined, through sighting, that the animal has moved outside the Level A harassment zone or has not been observed for 15 minutes. If a marine mammal is present in the Level B harassment zone, soft start may begin and a take by Level B harassment will be recorded. Soft start up may occur when these species are in the Level B harassment zone, whether they enter the Level B harassment zone from the Level A harassment zone or from outside the project area.

*Pre-Activity Monitoring* - Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the PSO will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start

cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, piling activities may begin and take by Level B harassment will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

*Timing Restrictions* - ADOT&PF plans to implement the Essential Fish Habitat (EFH) Conservation Recommendations developed by NMFS. These include a no in-water work timing window for three project components, Revilla New Ferry Berth and Upland Improvements, Gravina Airport Ferry Layup Facility, and Revilla Refurbish Existing Ferry Berth Facility, with no in-water work occurring between March 1 and June 15. Implementation of this timing window will likely reduce exposure/take of marine mammals to levels below what has been predicted, because some project locations will be able to install piles when other locations may not.

Based on our evaluation of the applicant's required measures NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### **Monitoring and Reporting**

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

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

### *Visual Monitoring*

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all incidents of marine mammal occurrence), and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

There will be at least one PSO present at or near each construction site during in-water pile installation and removal so that all Level A harassment zones and shutdown zones are monitored by a dedicated PSO at all times. PSOs will not perform duties for

more than 12 hours in a 24-hour period. PSOs will be land-based observers, positioned at the best practical vantage points. At least one other PSO for each active worksite will begin at the central worksite and travel along the Tongass Narrows until they have reached the edges of the monitoring zones, based on the Level B harassment zones. These PSOs will then monitor the edges of the monitoring zone and as much as possible of the rest of the monitoring zone, looking for animals entering the Level B harassment zone. If waters exceed a sea state that restricts the PSO's ability to make observations within the Level A harassment zones (e.g., excessive wind or fog), pile installation and removal must cease. Pile driving must not be re-initiated until the entire relevant Level A harassment zones are visible.

When combinations of one DTH hammer with a vibratory hammer, two DTH hammers, or two DTH hammers with a vibratory hammer are used simultaneously, creating a Level B harassment zone that is greater than 12,023 m in radius, one additional PSO (at least two total) will be stationed at the northernmost land-based location at the entrance to Tongass Narrows. One PSO will focus on Tongass Narrows, specifically watching for marine mammals that could approach or enter Tongass Narrows and the project area. The second PSO will look out into Clarence Strait, watching for marine mammals that could swim through the ensonified area. This monitoring requirement for concurrent driving scenarios was not included in the proposed initial IHA, but was included in the final initial IHA. No additional PSOs will be required at the southernmost monitoring location because the Level B harassment zones are truncated to the southeast by islands, which prevent propagation of sound in that direction beyond the confines of Tongass Narrows. Takes by Level B harassment will be recorded by PSOs and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

With this configuration, PSOs can have a full view of the Level A harassment zone and awareness of as much of the Level B harassment zone as possible. This monitoring will provide information on marine mammal occurrence within Tongass Narrows and how these marine mammals are impacted by pile installation and removal.

All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Independent observers (*i.e.*, not construction personnel);
- Observers must have their Curriculum Vitae/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.*, undergraduate degree or higher). Observers may substitute experience or training for education;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times

when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

### *Reporting*

NMFS is requiring that ADOT&PF submit a preliminary marine mammal monitoring report for the work covered under the initial IHA and this renewal at least 4 months prior to beginning the work covered under their second IHA, referred to as Phase II (85 FR 673; January 7, 2020). This preliminary report must contain all items that would be included in the draft final report (see below). This will allow NMFS to assess the impact of the activities relative to the analysis presented here, and modify the IHA for Phase II if the preliminary monitoring report shows unforeseen impacts on marine mammals in the area. If needed, NMFS will publish an amended proposed IHA, describing any changes but referencing the original IHA for Phase II, and include an opportunity for the public to comment on the amended proposed authorization.

In addition to the preliminary monitoring report discussed above, separate draft marine mammal monitoring reports must be submitted to NMFS within 90 days after the completion of both Phase I and Phase II pile driving, pile removal, and drilling activities. These reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins and ends;
- Construction activities occurring during each daily observation period;
- Weather parameters (*e.g.*, percent cover, visibility);



- Water conditions (*e.g.*, sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving/removal activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- An estimate of total take based on proportion of the monitoring zone that was observed.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, ADOT&PF shall report the incident to the Office of Protected Resources, NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

## **Public Comments**

A notice of NMFS' proposal to issue a Renewal IHA to ADOT&PF was published in the **Federal Register** on March 5, 2021 (86 FR 12918). That notice either described, or referenced descriptions of, the ADOT&PF'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 MMC. A summary of the comments and our responses are provided below, and the comment letter is available online at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>.

*Comment:* The Commission recommended that NMFS deny ADOT&PF's request to renew its IHA for Phase I activities, based on its assessment that the renewal issuance criteria were not met. First, they assert that the renewal request was not received 60 days prior to when the renewal is needed, as required, noting that while we indicated that ADOT&PF requested their renewal on December 28, we posted materials dated January 12. Second, they assert that the request did not meet the requirement that any changes in the activity are minor, specifically noting the applicant's change to the activity from 3 piles/day to 8 piles/day, and also a change in NMFS' general approach to analyzing Level A harassment for DTH piling (*i.e.*, considering it an impulsive source), and further suggesting that the required mitigation and PSOs would be inadequate given the increased zones. Third, the MMC asserted that the requirement that preliminary monitoring results do not indicate impacts of a scale or nature not previously analyzed was not met, specifically citing the fact that ADOT&PF did not "extrapolate" takes as required in areas that were not visually monitored.

*Response:* Regarding the date ADOT&PF requested the renewal, it is our responsibility to work with applicants to ensure that adequate and complete information is included in applications and renewal requests. ADOT&PF submitted their initial

renewal request on December 28, 2020 and then revised their request, providing updated information on the date indicated, January 12, 2021. There is no requirement in the MMPA or our regulations to post all versions of applications on our website and we have not typically done so. We further note that while the requirement to notify NMFS of the need for a renewal 60 days in advance of the needed effective date is presented as a renewal condition on our website, the MMC's comments have alerted us to the fact that the purpose of this requirement may not be clear. The 60-day deadline has nothing to do with ensuring the appropriateness of the project for renewal. The intention is to put renewal requesters on notice that they should request a renewal at least 60 days prior to the desired effective date to ensure we have adequate time to process the request, including publication of the proposed Renewal IHA and providing the additional 15 days for public comment. The intent is not to disqualify requesters from the renewal process if they are later than 60 days from the requested effective date of the Renewal IHA, but rather to provide potential requesters notice that we typically need at least 60 days to process their request and cannot ensure completion of the Renewal process in fewer than 60 days.

As the MMC notes one of the conditions of a Renewal IHA is that there are no more than minor changes in the applicant's activities from those described and analyzed in the initial IHA. As described above, ADOT&PF withdrew their request to increase the maximum number of piles that could be installed by impact driving in a day.

Regarding the change in the DTH calculation methods for Level A harassment raised by the MMC, we first note that it is not a change in the applicant's planned activity, but rather a change in NMFS' approach since the initial IHA was issued. As a general matter, renewal conditions are focused on ensuring the activity is identical, or has no more than minor changes, and the absence of new information suggesting impacts of a

nature or scale not initially analyzed and affecting the initial findings, not on changes in NMFS recommended methods.

As described in more detail in our recent response to a similar comment for the CTJV Renewal (86 FR 14609, March 17, 2021), the DTH data available to inform the analytical approach are limited and the updated interim methodology adopted by NMFS moving forward, and referenced in the MMC's comment, takes the most conservative approach to both Level A and Level B harassment estimation, with the expectation that take is likely overestimated using this method. The fact that NMFS is using the new approach moving forward does not mean the prior approach is unsound. Here, while the Level A harassment zones would be somewhat larger using the updated methodology, it would not change the take estimates for any species or stock, the nature of the expected impacts, or any of our findings. The take estimates in the initial IHA were based on the prediction that a very small number of three species may occasionally potentially approach close enough within a given amount of days/months (which are still fewer for this renewal than for the initial IHA) and stay long enough to incur PTS, rather than upon any density/area calculations. It is highly unlikely that a change in the Level A harassment zones would result in any change in the potential for any of this to occur. Further, as described below, the monitoring to date indicates that far fewer marine mammals are entering the activity area than expected, and the mitigation measures described in the initial IHA remain adequate and appropriate. Accordingly, as required under the Renewal conditions, upon review of the request for Renewal, the status of the affected species or stocks, the preliminary monitoring report, and any other pertinent information, we have determined that there are no changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Regarding the preliminary monitoring information provided by the current IHA Holder and applicant for the Renewal, significantly fewer marine mammals of all species were detected and reported within harassment zones than were predicted and authorized (17 reported takes, less than 1 percent of the total take authorized across species, and no more than 3 percent of any species or stock) given the amount of activity conducted. Regarding the MMC's comment that ADOT&PF was required to extrapolate take based on the unseen portion of the zones, the requirement does not apply in this case because PSOs positioned themselves along the Narrows in a manner that enabled a full view of the entire Level B harassment zones. The Level B harassment zones were completely visible throughout the work conducted to date, and so extrapolation was not necessary as there were no unseen portions of the zones. The preliminary monitoring data provided by the applicant clearly does not indicate impacts of a scale or nature not previously analyzed or authorized.

As described above, despite development of an alternative approach to DTH pile driving since the initial IHA that is not necessary to apply here, this project qualifies for a renewal in that the applicant proposes to complete a subset of the initially analyzed activities with no changes, the preliminary monitoring shows no impacts of a scale or nature beyond those previously analyzed (in fact they were significantly less than that predicted), the total number of days of driving and the amount of take authorized are both less than that in the initial IHA, the mitigation and monitoring measures remain the same, and upon review NMFS has determined that the findings in the initial IHA remain valid. We therefore decline to accept the Commission's recommendation that we deny the renewal request.

*Comment:* The MMC further notes that NMFS did not abide by one of the basic tenets of its process that it will provide direct notice of a proposed renewal by email,

phone, or postal service (in this order) to persons who commented on the proposed initial authorization because it did not inform the MMC of the renewal request.

*Response:* NMFS acknowledges that our inadvertent lack of direct notice to the MMC was an error in our current practice and we have taken steps to ensure that we do not miss notifying the MMC about future proposed Renewal IHA notices. Nonetheless, our oversight in providing the MMC with direct notice of the proposed Renewal does not necessitate the denial of the renewal, which otherwise qualifies for issuance based on the renewal conditions. Because the MMC was the only person or entity that commented on the initial proposed IHA, there is no one else who did not receive direct notice. In addition, the MMC received notice of the proposed Renewal IHA through the March 5, 2021 **Federal Register** notice and was able to review the proposed Renewal notice and provide its comments within the needed timeframe. We likewise were able to fully consider the MMC's comments within the needed timeframe. Therefore, our inadvertent failure to provide the MMC with direct notice was functionally harmless in this case.

*Comment:* The MMC asserts that NMFS wrongly considered the two phases of ADOT&PF's project and that we ignored the possibility that ADOT&PF would conduct both phases simultaneously.

*Response:* We considered this issue in the proposed renewal notice. On page 12920 (86 FR 12918; March 5, 2021) we noted that Phase I and Phase II of the work would not occur simultaneously. We have emphasized this again in this final Renewal IHA notice.

*Comment:* Based on the asserted and perceived problems noted above, the MMC recommends that NMFS formally revoke its authorization renewal process.

*Response:* NMFS does not agree with the MMC's recommendation, and does not adopt it. First, as noted above, we have concurred with the MMC's interpretation of the increase in the maximum number of piles per day from 3 to 8, and, following our

recommendation, ADOT&PF rescinded the request for this change. Additionally, as discussed above the MMC asserted numerous problems that in fact were not true, were based on the MMC's opinion, or did not appreciably impact the MMC's ability to comment on the proposed Renewal, and thus do not establish problems with this Renewal IHA or systemic problems with the renewal process and its compliance with Section 101(a)(5)(D) of the MMPA overall.

Further, we note in prior responses to comments about IHA Renewals (*e.g.*, 84 FR 52464; October 2, 2019, 85 FR 53342; August 28, 2020; and 86 FR 14606; March 17, 2021), 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 and will adjust its conditions and implementation as needed.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 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**

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 all information discussed above, as well as stock abundance information. The estimated abundance of the West Coast Transient and Northern Resident Killer whale stocks and Steller sea lion Eastern U.S. stock have increased slightly, whereas, the Clarence Strait harbor seal stock decreased 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) 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, 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, in this case with the NMFS' Alaska Regional Office.

NMFS' Alaska Region issued a revised Biological Opinion to NMFS' Office of Protected Resources on December 19, 2019 which concluded that issuance of IHAs to



ADOT&PF is not likely to jeopardize the continued existence of Mexico DPS humpback whales. Since then, the regional office determined that issuance of the renewal IHA will not alter take or require re-initiation of the consultation.

## **Renewal**

As a result of these determinations, NMFS has issued a Renewal IHA to ADOT&PF for the taking of marine mammals incidental to the remaining activities of Phase I of the two-phase ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK from the date of issuance through February 28, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. The IHA can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Dated: April 28, 2021.

**Catherine Marzin,**

*Acting Director, Office of Protected Resource,*

*National Marine Fisheries Service.*

[FR Doc. 2021-09451 Filed: 5/4/2021 8:45 am; Publication Date: 5/5/2021]