



DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

[RTID 0648-XD109]

### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Falls Bridge Replacement Project in Blue Hill, Maine**

**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 Maine Department of Transportation (MEDOT) to incidentally harass marine mammals incidental to Falls Bridge Replacement Project in Blue Hill, Maine.

**DATES:** This renewal IHA is valid from July 1, 2023 through June 30, 2024.

**ADDRESSES:** 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 below.

**FOR FURTHER INFORMATION CONTACT:** Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427-8401.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

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

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 1-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 Specified Activity* section of the initial IHA issuance notice is planned or (2) the activities as described in the *Description of the Specified Activity* and *Anticipated Impacts* 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** section of the notice of issuance of the initial IHA, 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 1 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).

- 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.

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.*

### **History of Request**

On December 8, 2021, NMFS issued an IHA to MEDOT to take marine mammals incidental to the Falls Bridge Replacement Project in Blue Hill, Maine (86 FR 71034, December 14, 2021), effective from July 1, 2022 through June 30, 2023. On March 3, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be 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-maine-department-transportation-falls-bridge-project-blue-hill>) 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 June 9, 2023 (88 FR 37864).

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

The MEDOT construction project consists of creating a temporary bridge for vehicle traffic during work on the Falls Bridge, which was expected to require the installation (and then removal when the project is complete) of 15 24-inch steel pipe piles. Work on the main bridge deck was not expected to incidentally harass marine mammals, however in order to facilitate that work, MEDOT planned to place one or two large trestles (up to 100 foot by 125 foot (30.5 by 38 meters) long) in the water next to the bridge. These trestles were expected to require the installation of up to 60 24-inch diameter steel pipe piles. In addition to the temporary work trestles and temporary bridge, MEDOT anticipated the need for four temporary support towers during the demolition

and removal of the existing bridge superstructure. The temporary support towers were to be placed at the corners of the tied arch, approximately 20 feet (6.1 meters) in from the existing bridge abutments. The temporary support towers were expected to require up to 5 24-inch steel pipe piles to support each of the towers, for a total of 20 24-inch steel pipe piles.

In total the initial project plans included the installation and removal of 95 24-inch diameter steel pipe piles. It was expected that all 95 piles would be installed in rock sockets (holes) in the bedrock created by down-the-hole (DTH) equipment. Impact pile driving would be used to seat the piles and potentially drive them through softer substrates. For piles driven in the center of the channel under the bridge (mostly for the trestles), additional lateral stability may require the use of rebar tension anchors drilled deeper into the substrate in the center of the piles and connected to the piles once installed. This would be accomplished by using an 8-inch diameter DTH bit. It was expected that no more than 65 of the 95 piles would require these tension anchors. Once the work on the bridge was complete, all 95 piles would be removed using a vibratory hammer. The DTH and impact hammer installation and vibratory extraction of the piles was expected to take up to 80 days of in-water work.

MEDOT subsequently updated its construction plans by reducing the number of driven piles from the previously estimated 95 piles down to a total of 12 piles. Pile size was also reduced from 24-inch steel pipe piles to 14-inch steel pipe piles. MEDOT completed all pile driving with the use of an impact hammer, and the DTH method was not used by MEDOT. All project related pile installation activities conducted under the initial IHA, which were limited to installation of 12 14-inch steel piles, were completed over a 2-day period in October and November 2022.

This renewal request is to cover the subset of the activities covered in the initial IHA that will not be completed during the effective IHA period. MEDOT plans to

remove all 12 14-inch steel pipe piles through vibratory means between October and December of 2023. MEDOT estimates it will take 30 minutes to remove a single pile, with up to six piles removed per day.

The likely or possible impacts of MEDOT's planned activity on marine mammals could involve both non-acoustic and acoustic stressors and are unchanged from the impacts described in the initial IHA. Potential non-acoustic stressors could result from the physical presence of the equipment, vessels, and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal. The effects of underwater and in-air noise and visual disturbance from the MEDOT's planned activities have the potential to result in Level B harassment of marine mammals in the action area.

#### *Detailed Description of the Activity*

A detailed description of the construction activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization (86 FR 61164, November 5, 2021; 86 FR 71034, December 14, 2021). As previously mentioned, this request is for a subset of the activities authorized in the initial IHA that would not be completed prior to its expiration. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. Changes to the initial scope include the reduction of pile size and number of piles required. The initial scope planned for the installation and removal of 95 24-inch steel pipe piles. In total, 12 14-inch piles were installed. MEDOT is requesting a renewal IHA for vibratory removal of 12 14-inch steel pipe piles. The renewal IHA would be effective from July 1, 2023 through June 30, 2024.

#### *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 notice of the proposed IHA for the initial authorization (86 FR 61164, November 5, 2021). NMFS has reviewed the monitoring data from the initial IHA, 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 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 (86 FR 61164, November 5, 2021).

#### *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 here may be found in the notice of the proposed IHA for the initial authorization (86 FR 61164, November 5, 2021). NMFS has reviewed the monitoring data from the initial IHA, 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 notices of the proposed and final IHAs for the initial authorization (86 FR 61164, November 5, 2021; 86 FR 71034, December 14, 2021). Specifically, days of operation, area or space within which harassment is likely to occur, and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, daily take estimates and types of take remain unchanged from the initial IHA. The number of takes authorized in this renewal are a subset of the initial authorized takes that better represent the amount

of activity left to complete. These takes, which reflect the lower number of remaining days of work, are indicated below in Table 1.

**Table 1—Amount of Taking, by Level B Harassment, by Species and Stock and Percent of Take by Stock**

Species	Stock	Take	Percent of stock
Harbor porpoise	Gulf Maine/ Bay of Fundy	20	<0.1
Atlantic white-sided dolphin	Western North Atlantic	20	<0.1
Common dolphin	Western North Atlantic	80	0.1
Harbor seal	Western North Atlantic	198	0.3
Gray seal	Western North Atlantic	8	<0.1
Harp seal	Western North Atlantic	1	<0.1
Hooded seal	Western North Atlantic	1	UNK

*Description of Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures included as requirements in this authorization are almost identical to those included in the Federal Register (FR) notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate (86 FR 71034, December 14, 2021). In the renewal IHA, the pile size and the amount of piles removed per day has been updated to reflect what occurred under the initial IHA. MEDOT’s original shutdown zones were based on removal of three 24-inch steel piles per day. However, due to the reduced pile size used in the initial IHA, MEDOT plans to remove six 14-in steel piles per day, resulting in larger estimated Level A harassment isopleths. The estimated Level A harassment isopleth for high frequency cetaceans increases from 25 meters to 62 meters. However, the shutdown zone for phocids remains the same. As a result, MEDOT proposed to increase the shutdown zone for cetaceans from 50 meters to 100 meters. This update is reflected in Table 2 below and in the IHA renewal.

The following mitigation, monitoring, and reporting measures are planned for this renewal:

- The MEDOT must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such

activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant MEDOT staff prior to the start of all pile driving activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood.
- Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.
- MEDOT will establish and implement the shutdown zones. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group. To simplify implementation of shutdown zones, MEDOT has planned to implement shutdown zones for two groups of marine mammals, cetaceans and pinnipeds, with the shutdown zone in each group being the largest of the shutdown zones for any of the hearing groups contained within that group. MEDOT has also voluntarily proposed to increase shutdown sizes above those we would typically require in order to be precautionary and protective to marine mammals. Due to the modification of pile size and duration as discussed above, the updated shutdown zones for the IHA renewal are in Table 2.

**Table 2—Minimum Required Shutdown Zones**

Activity	Shutdown Distance (m)	
	Cetaceans	Pinnipeds
Vibratory Removal	100	50

- Monitoring must take place from 30 minutes prior to initiation of construction activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of construction activity.
- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead Protected Species Observer (PSO) to determine the shutdown zones clear of marine mammals. Construction may commence when the determination is made.
- If construction is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.
- MEDOT must use soft start techniques. Soft start requires contractors and equipment to slowly approach the work site creating a visual disturbance allowing animals in close proximity to construction activities a chance to leave the area prior to stone resetting or new stone placement. Contractors shall avoid walking or driving equipment through the seal haulout. A soft start must be implemented at the start of each day's construction activity and at any time following cessation of activity for a period of 30 minutes or longer.
- The MEDOT must employ at least one PSO to monitor the shutdown and Level B harassment zones.
- Monitoring will be conducted 30 minutes before, during, and 30 minutes after construction activities. In addition, observers shall record all incidents of marine

mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from construction activity.

- The MEDOT must submit a draft report detailing all monitoring within 90 calendar days of the completion of marine mammal monitoring or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first.
- The MEDOT must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS.
- The MEDOT must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).
- The MEDOT must report injured or dead marine mammals.

### **Comments and Responses**

A notice of NMFS' proposal to issue a renewal IHA to MEDOT was published in the **Federal Register** June 9, 2023 (88 FR 37864). That notice either described, or referenced descriptions of, the MEDOT's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and mitigation, monitoring and reporting measures. NMFS received no public comments.

### **Determinations**

The renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the MEDOT's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance 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. 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) MEDOT'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.

#### **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 renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

#### **Endangered Species Act**

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

**Renewal**

NMFS has issued a renewal IHA to MEDOT for the take of marine mammals incidental to conducting Falls Bridge Replacement Project in Blue Hill, Maine, from July 1, 2023 through June 30, 2024.

**Dated:** June 29, 2023.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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