



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD237]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Pier 58 Reconstruction Project in Seattle, Washington

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 City of Seattle, Washington (City) to incidentally harass marine mammals incidental to the Pier 58 Reconstruction Project.

DATES: This renewal IHA is effective from August 10, 2023 through July 31, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

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, 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 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 1-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 Activities section of the initial IHA issuance notice is planned, or (2) the activities as described in the Description of the Specified Activities 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); 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.

History of Request

On May 20, 2022, NMFS issued an IHA to the City to take marine mammals incidental to the Pier 58 Reconstruction Project in Seattle, Washington (87 FR 31985), effective from August 1, 2022 through July 31, 2023. NMFS received an application for

the renewal of that initial IHA on April 3, 2023. As described in the application for renewal IHA, the activities for which the renewal IHA was issued are a subset of those covered in the initial authorization in addition to a small amount of nearly identical work that was not covered under the initial IHA. As required, the City also provided a preliminary monitoring report (available at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-city-seattle-pier-58-reconstruction-project-seattle-wa>) which confirmed that it had implemented the required mitigation and monitoring, and which also showed that no impacts of a scale or nature not previously analyzed or authorized occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

The City is in the process of reconstructing Waterfront Park, which will be renamed Pier 58, along the Elliott Bay shoreline in Seattle, Washington. The City is repairing structural and safety deficiencies and optimizing public access and recreational uses of the piers. The Pier 58 reconstruction project includes vibratory removal of existing in-water piles and vibratory and impact installation of new piles. The reconstructed pier requires installation of 120 permanent 30-inch steel piles by vibratory hammer and impact proofing. Under the initial IHA, 76 steel piles were successfully installed. The remaining 44 piles, which represent a subset of the originally planned 120 piles, would be installed under the renewal IHA. In addition, installation of 100 24-inch temporary steel template piles by vibratory hammer and impact proofing was analyzed for the initial IHA. The 24-inch piles were to be subsequently removed by vibratory extraction. However, none of the 100 24-inch temporary piles were installed during Season 1 and these piles may not be required at all under the renewal IHA. At most, a subset of 33 24-inch temporary piles would be utilized. A total of 31 existing steel H-piles and timber piles were removed under the initial IHA by pulling the piles using vibratory extraction or the clamshell bucket method. The nearly identical activity

included under the renewal IHA is the removal of eight 12-inch creosote timber piles (1 day) by vibratory hammer and the vibratory installation of eight 16-inch steel piles (2 days) at the nearby Don Armeni Boat Ramp. All in-water work with the potential to affect marine mammals will occur during the work window allowed by NOAA, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and Washington State Department of Fish and Wildlife. For this renewal request, this window is anticipated to be September 1, 2023, through February 15, 2024. Pile removal and installation will occur during daylight hours, typically during a work shift of 8 hours or fewer. The work would include periods of vibratory removal of timber piles, vibratory installation of steel piles, and impact installation of steel piles.

Under the initial IHA, take by Level B harassment was authorized for 11 species/stocks and limited take by Level A harassment was authorized for 3 of these species (harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), and harbor seal (*Phoca vitulina*)). No species were observed in the estimated Level A harassment zones during Season 1 pile driving. Observations in the Level B harassment zones during pile activity include 130 harbor seals out of 660 take incidents authorized; 92 California sea lions (*Zalophus californianus*) out of 700 incidents of take that were authorized; and one Steller sea lion (*Eumetopias jubatus*) out of 140 incidents of take that were authorized. No other species were observed in the Level B harassment zones during pile driving activity. The total number of potential takes by Level B harassment for Season 1 were only a small fraction of what were authorized in the IHA: potential harbor seal takes were only 20 percent of the authorized takes, potential California sea lion takes were only 13 percent of the authorized takes, and potential Steller sea lion takes were only 0.7 percent of the authorized takes.

Under the original authorization IHA, Season 1 in-water pile activity occurred at Pier 58 across 45 workdays between October 3, 2022, and February 15, 2023. Most

workdays consisted of both vibratory and impact hammer installation of 30-inch steel piles; vibratory pile activity occurred on 36 workdays, and impact pile activity occurred on 36 workdays. Of the total 81 piles installed, 5 test piles and 76 production piles were installed via vibratory and impact hammer.

It is anticipated that approximately 8 additional days will be required for installation of the remaining 44 30-inch steel piles at Pier 58, and approximately 10 days will be required for impact proofing of the 30-inch steel piles. It is anticipated that only 1 day will be required to remove the eight timber piles at Don Armeni Boat Ramp, and 2 days will be required for the installation of eight 16-inch steel piles. This work could occur over a period of 3 months.

Detailed Description of the Activity

A detailed description of the construction activities, including the installation of 30-inch permanent steel piles and 24-inch temporary template steel piles, may be found in the notices of the proposed and final IHAs for the initial authorization (87 FR 12089, March 3, 2022; 87 FR 31985, May 26, 2022). As previously mentioned, these specific activities represent 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.

Minor changes to the initial scope include the removal of eight 12-inch creosote timber piles by vibratory hammer and the vibratory installation of eight 16-inch steel piles at the boat ramp. Vibratory removal of the 12-inch creosote timber piles, requiring an estimated 2 days, is nearly identical to the vibratory removal of H-piles and timber piles, which required 3 days, under the initial IHA. The installation of eight 16-inch steel piles under the renewal IHA is nearly identical to the installation of 30-inch steel piles under the initial IHA with the only difference being the size of piles (30-inch vs. 16-inch)

and the duration (36 days vs. 2 days). The renewal IHA would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA, through July 31, 2024.

Description of Marine Mammals

A description of the marine mammals in the area of the activities including information on abundance, status, distribution, and hearing, may be found in the Notice of the Proposed IHA for the initial authorization (87 FR 12089, March 3, 2022). 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 (87 FR 12089, March 3, 2022).

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 planned activities may be found in the proposed and final IHAs (87 FR 12089, March 3, 2022; 87 FR 31985, May 26, 2022) for the initial authorization. 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 Notice of the proposed and/or final IHAs for the initial authorization (87 FR 12089, March 3, 2022; 87 FR 31985, May 26, 2022). Note that the sound source levels (SLs) for the vibratory and impact installation of 30-inch steel piles have been updated based on acoustic measurements from Season 1. The *Waterfront Park*

Timber and steel H-pile removal	6.1	0.5	9.0	3.7	0.3	1,359	9
30-inch steel vibratory install, 24-inch steel vibratory install and removal*	19.3	1.7	28.6	11.7	0.8	7,357	36
30-in steel impact install	153.3	5.5	182.6	82.0	6.0	215	

*No installation or removal of 24-in steel piles was conducted

Table 2 -- Pier 58 Level A Harassment and Level B Harassment Zones from Season 2 Under the IHA Renewal

Pile Size, Type, and Method	Level A harassment zone (m)					Level B harassment zone (m)	Number of days
	LF cetacean	MF cetaceans	HF cetacean	Phocids	Otariids		
Timber vibratory removal	1.1	0.1	1.6	0.7	0.0	453	1
30-inch steel vibratory install, 24-inch steel vibratory install and removal*	57.0	5.1	84.3	34.6	2.4	21,710	8
30-inch steel impact installation	550.7	19.6	655.9	294.7	21.5	616	10
16-inch steel vibratory installation	9.0	0.8	13.3	5.4	0.4	3,415	2

*Use of 24-inch temporary piles may not be necessary under the renewal IHA. At most, a subset of 33 24-inch piles would be utilized. Note that if the 24-inch steel pile installation and removal activities occur, it would be on the same days as vibratory and impact driving of the 30-inch piles, so there are no added extra days for this activity.

The Level A and Level B harassment zone sizes for 30-inch steel pile impact and vibratory installation were calculated to be larger for the Season 2 renewal IHA than those used in Season 1 under the initial IHA. This is due to the results from Season 1 acoustic measurements that demonstrated higher SLs for vibratory and impact driving. In addition, increased zone sizes result from an increase in the number of strikes per pile, number of piles per day and total number of strikes per day for impact driving. Additionally, while the behavioral harassment zone for 30-inch vibratory installation has been calculated to extend to just under 22 kilometers (km), the actual maximum ensonified distance is approximately 14 km since the sound field is constrained by the shoreline of Elliott Bay as well as by Bainbridge Island located west of Elliott Bay.

The stocks taken (11 total), methods of take (impact and vibratory installation; vibratory removal), and types of take (11 by Level B harassment; 3 by Level A harassment) remain unchanged from the previously issued IHA covering Season 1. The City utilized the same approach for estimating take for Season 2 and the renewal IHA as was used in support of the initial IHA. The results of the preliminary monitoring report were also considered. The 30-inch pile driving work for Pier 58 is anticipated to occur over 18 days within an estimated 2 month time period. The pile removal and driving work for Don Armeni is anticipated to occur over 3 days within 1 month of work.

Detailed explanations describing how the take numbers were derived from observational data may be found in the notice of final IHA (87 FR 31985, May 26, 2022). Note that even though the Level A and Level B harassment zone sizes are larger in the renewal IHA compared to the initial IHA, as a result of NMFS' consideration of new site-specific data, we have concluded that the authorized take numbers remain appropriate and sufficient. As part of the Season 1 monitoring requirements, the City was required to station a protected species observer (PSO) on the Seattle-Bainbridge Ferry whenever vibratory installation was underway. The Ferry runs non-stop throughout the day and the PSO recorded all animal observations, even those outside of the specified harassment zones. The number of observations beyond the Level B harassment zone during Season 1 (7,357 meters (m)) was comparatively small. Only four species were observed beyond the behavioral harassment zone.

A brief summary of take assumptions for each species is provided here. For gray whales, minke whales, and northern elephant seals, the City, with NMFS' concurrence, assumed a single animal would be taken per month by Level B harassment. For long-beaked common dolphin and common bottlenose dolphin, the City assumed, and NMFS concurred, there would be seven takes per month by Level B harassment. For transient killer whales it was assumed that six animals could be taken per month. The Level A

harassment zone is larger than the Level B harassment zone for high-frequency cetaceans. For the harbor porpoise, it was assumed that six animals could be taken per day by Level B harassment. That is, they may enter into the larger Level A harassment zone, but are unlikely to remain long enough to accumulate energy at levels that would result in injury. Although the City must implement a shutdown zone of 660 m during this activity, due to the cryptic nature and lower detectability of harbor porpoises at large distances, the City anticipates that up to 6 of the harbor porpoises (2 per month) that enter the Level A harassment zone could enter undetected and remain long enough to experience auditory injury. It was assumed that up to 12 Dall’s porpoises could experience Level B harassment per month. As a high frequency cetacean, the Level A harassment zone is larger than the Level B harassment zone. As with harbor porpoises, the Dall’s porpoise could enter into the Level A harassment zone, but are unlikely to remain long enough to sustain auditory injury. Therefore, the animal would be exposed to Level B harassment. The City must implement a shutdown zone of 660 m during this activity, but anticipates that due to the cryptic nature and lower detectability of harbor porpoises at large distances, up to 6 of the Dall’s porpoises (2 per month) that enter the Level A harassment zone could remain long enough to experience auditory injury. It was assumed that up to 10 California sea lions and 2 Steller sea lions could be taken by Level B harassment each in-water work day. NMFS concurred with the City’s request for take by Level B harassment of a single northern elephant seal per month. Finally, it was assumed that 10 harbor seals could enter the Level B harassment zone per day and 1 seal may approach closer and enter the 82 m Level A harassment zone before the animal is detected and activities shut down.

Table 3 -- Authorized Take of Marine Mammals by Level A and Level B Harassment from Pier 58 Renewal IHA by Species and Stock and Percent of Take by Stock

Species	Stock	Take by Level A harassment	Take by Level B harassment	Stock abundance	Percent of stock
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Pacific harbor seal	Washington Northern Inland Waters stock	21	189	11,036	1.90
Northern elephant seal	California breeding	0	3	187,386	<0.01
California sea lion	U.S.	0	210	257,606	0.08
Steller sea lion	Eastern U.S.	0	42	43,201	0.10
Harbor porpoise	Washington Inland Waters	6	120	11,233	1.12
Dall's porpoise	California/Oregon/Washington	6	30	16,498	0.22
Long-beaked common dolphin	California	0	21	83,379	0.03
Common bottlenose dolphin	California/Oregon/Washington Offshore	0	21	3,477	0.60
Transient killer whale	West Coast Transient	0	18	349	5.16
Gray whale	Eastern North Pacific	0	3	26,960	0.01
Minke whale	California/Oregon/Washington Stock	0	3	915	0.33

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are nearly identical to those included in the FR Notice announcing the issuance of the initial IHA (87 FR 31985, May 26, 2022), although the size of the shutdown and Level B harassment areas has been revised as appropriate, as shown in Table 4 below. The following identical measures for this renewal include;

- Shut down construction operations (including in-water heavy machinery work other than pile driving) if a marine mammal comes within 10 m of construction activity or a vessel involved with construction activity (*e.g.*, barge) to avoid direct physical interaction with marine mammals;

- Shut down during active pile driving if marine mammals approach pile driving activities within hearing group-specific shutdown zones;
- Contact the local marine mammal sightings network (Orca Network) hourly to obtain real-time sightings reports of marine mammals in the project area;
- Shut down if any species for which take has not been authorized (*e.g.*, Southern Resident killer whales, humpback whales), or a species for which take has been authorized but the authorized take numbers have been met, enters the Level B harassment zones;
- Implement impact pile driving soft starts whereby hammer energy is gradually ramped up;
- Use of a bubble curtain during all impact pile driving.
- Use of NMFS-approved PSOs to monitor the entire Level A and Level B harassment zones;
- Submit draft reports on all monitoring within 90 calendar days of the completion of marine mammal monitoring at each pier or 60 days prior to the issuance of any subsequent IHAs for these projects, whichever comes first;
- Prepare and submit final reports within 30 days following resolution of comments on the draft report from NMFS;
- Submit all PSO datasheets and/or raw sightings data (in a separate file from the final reports referenced above); and
- Report injured or dead marine mammals.

The shutdown and Level B harassment zones shown in Table 4 have been revised from the Season 1 initial IHA to reflect the updated SLs associated with 30-inch impact and vibratory driving as well as the increase in strikes per day for impact driving described previously.

Table 4 -- Shutdown and Level B Harassment Zones for IHA Renewal

Pile Size, Type, and Method	Minimum Shutdown Zone (m)					Level B Harassment Zone (m)
	LF Cetacean	MF Cetacean	HF Cetacean	Phocid	Otariid	
Timber vibratory removal (Don Armeni)	10	10	10	10	10	453
30-inch steel vibratory installation	60	10	85	35	10	21,710
30-inch steel impact installation	555	20	660	295	25	616
16-inch steel vibratory installation (Don Armeni)	10	10	15	10	10	3,415

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (87 FR 12089, March 3, 2022) and solicited public comments on both our proposal to issue the initial IHA for the project and on the potential for a renewal IHA, should certain requirements be met. NMFS then published an additional 15-day opportunity to comment on the proposed renewal IHA (88 FR 45393; July 17, 2023). No comments were received in response to either public comment period.

Determinations

There is no new information which would change our potential impacts to the specified marine mammal species and stocks. The anticipated effects of the action under the renewal IHA are expected to be the same as those that may have occurred under the initial IHA. The species authorized for take are identical to those that were identified in the initial IHA. The same species that were authorized for limited take by Level A harassment under the initial IHA are authorized for take by Level A harassment under the renewal IHA. The Level A and Level B harassment zones for 30-inch pile installation under the renewal IHA are larger than those contained in the initial IHA. However, the number of animals of each species authorized for take is less than what was authorized under the initial IHA since the number of in-water work days anticipated is less than half

of the number of work days that occurred under the initial IHA. Furthermore, PSO monitoring of the renewal IHA's extended harassment zones demonstrated that most take occurs closer to the in-water driving location. The mitigation and monitoring measures required under the renewal IHA are identical to those prescribed through the initial IHA, with one exception. The shutdown and Level B harassment zones under the renewal IHA are larger than those employed in Season 1.

After analyzing the City's application for the initial IHA, NMFS determined that the action would have a negligible impact on all affected stocks and that the taking of authorized species would be small relative to population size (< six percent of the total abundance for all stocks).

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) The City'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

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

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 species is authorized or expected to result from these activities. 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 the City of Seattle for the take of marine mammals incidental to construction activities associated with the Pier 58 Reconstruction Project in Seattle, Washington effective from August 10, 2023 through July 31, 2024.

Dated: August 14, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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