



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648-XD697]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Alaska Modernization Program Phase 2: Cargo Docks Replacement Project in Anchorage, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Port of Alaska (POA) for authorization to take small numbers of marine mammals incidental to construction activities related to the Port of Alaska Modernization Program (PAMP) Phase 2B: Cargo Docks Replacement Project, including impact and vibratory pile driving at the POA in Anchorage, Alaska, over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the POA's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the POA's application and request.

DATES: Comments and information must be received no later than *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West

Highway, Silver Spring, MD 20910 and electronic comments should be sent to

ITP.Hotchkin@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/node/23111> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the POA's application may be obtained online at: *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On January 3, 2023, NMFS received an application from the POA requesting authorization for take of marine mammals incidental to construction activities related to the PAMP Phase 2B: Cargo Terminals Reconstruction at the POA in Anchorage, Alaska. NMFS provided comments on the application on March 3, 2023, April 20, 2023, and May 18, 2023. After the applicant submitted a revised application on October 13, 2023, and responded to additional questions sent on December 20, 2023, we determined the application was adequate and complete on February 12, 2024. The requested regulations would be valid for 5 years, from April 1, 2026 through March 31, 2031. The POA plans to conduct necessary work, including impact and vibratory pile driving, to demolish the

existing cargo terminals 1 and 2 and partially demolish terminal 3, and to construct new terminals 1 and 2. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, the POA requests authorization to incidentally take marine mammals.

Specified Activities

The POA was constructed primarily in the 1960s, and is currently in poor condition and substantially past its initial design life. The existing cargo terminals T1, T2, and T3 are deteriorating and in poor structural condition, and present safety and security concerns for human health and the economic stability of the state of Alaska. The PAMP is designed to replace the existing facilities with new infrastructure incorporating modern seismic codes over a 75-year design life. PAMP Phase 2B includes the demolition and replacement of terminals T1 and T2, and the partial demolition of T3. This phase is expected to take approximately 6 years to complete; this request is for the first 5 years of construction. Activities proposed for year 6 will be covered in an additional IHA request submitted prior to the end of the 5-year period of effectiveness for the requested incidental take regulations. Pile installation will include both temporary (36-inch (in)) and permanent (72-in) steel pipe piles by impact and vibratory hammers. Removal of temporary piles and existing structures (16-in to 42-in steel pipe piles) will be primarily by cutting; dead-pull and vibratory extraction methods may also be used. Existing piles may also be left standing in their current positions. Approximately 261 permanent piles and 470 temporary piles will be installed and approximately 48 temporary piles will be extracted with a vibratory hammer over the 5-year period. The work is expected to require approximately 337 days between the months of April and November over the 5 year period. The POA requests take of marine mammals by Level B harassment for seven

species (including Cook Inlet beluga whales (*Delphinapterus leucas*)), and take by Level A harassment of five species.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the POA's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the POA, if appropriate.

Dated: February 28, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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