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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD585]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Whittier Head of the Bay Cruise Dock Project

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Turnagain Marine Construction (TMC) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the cruise dock construction project in Whittier, Alaska. TMC's activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.harlacher@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, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* 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: Jenna Harlacher, Office of Protected Resources (OPR), 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 promulgated 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”). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as “take,” “harassment,” and “negligible impact” can be found in the MMPA and the NMFS’s implementing regulations (see 16 U.S.C. 1362; 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 IHA, 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 of an 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:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

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 preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On March 29, 2023, NMFS issued an IHA to TMC to take marine mammals incidental to the construction of the cruise ship dock in Whittier, Alaska (88 FR 19927, April 4, 2023), effective from April 1, 2023 through March 31, 2024. On November 16, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, 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 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.

Description of the Specified Activities and Anticipated Impacts

TMC's planned cruise ship construction project was planned to cover a 12-month window during which approximately 129 days of pile-installation and -removal activity

will occur. This project involved installation and removal of seventy-two 36-inch (in) (0.91-meter (m)) temporary steel pile guides and installation of thirty-six 36-in (0.91-m), sixteen 42-in (1.1-m), and twenty 48-in (1.2-m) permanent steel piles. Three different installation methods were planned to be used including vibratory installation of piles into dense material, impact pile driving to drive piling to tip elevation, and the Down-the-Hole (DTH) hammer to drill pile into the bedrock. TMC planned to deploy a bubble curtain to the 60-foot (ft) (18.3-m) isobath. This was planned to be used during all activities that fall below the 60-ft (18.3-m) isobath.

Due to unexpected winter weather conditions causing slower construction, TMC will not complete the initial construction during the 1-year period. Specifically, at the time of the renewal request, TMC had completed installation of 51 permanent piles to construct the approach trestle, 2 float restraint dolphins, and most of the mooring trestle. With the remaining time under the initial IHA, TMC anticipates completing at a minimum installation of 10 additional permanent piles.

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. TMC plans to complete the remaining construction activities, which would include at maximum installation of four 48-in piles for one mooring dolphin, installation of seven 36-in piles for the remainder of the mooring trestle, and installation and removal of eleven 36-in temporary piles to guide installation of the remaining permanent piles.

The likely or possible impacts of the TMC's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors and is 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. Sounds resulting from pile installation, removal, and drilling may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment.

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (88 FR 9227, February 13, 2023; 88 FR 19927, April 4, 2023). As previously mentioned, this request is for a subset of the activities considered for 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. The proposed renewal IHA would be effective from April 1, 2024 through March 31, 2025.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (88 FR 9227, February 13, 2023).

Since the initial IHA was published, NMFS published the final 2022 Alaska and Pacific Stock Assessment Reports (SARs), which describe revised stock structures under the MMPA for humpback whales. In the initial notice of proposed and final IHAs, we explained these proposed changes and that these changes would be adopted when final.

Upon finalization of these revised stock structures, we have made appropriate updates, including attribution of take numbers to stock (see Estimated Take).

The revision to humpback whale stock structure modifies the previously MMPA-designated humpback stocks to align more closely with the ESA-designated distinct population segments (DPSs) (Caretta *et al.*, 2023; Young *et al.*, 2023). Specifically, the three existing North Pacific humpback whale stocks (Central North Pacific and Western North Pacific stocks addressed in the Alaska SAR and the California/Oregon/Washington stock addressed in the Pacific SAR) were replaced by five stocks (Western North Pacific, Hawai'i, and Mexico-North Pacific stocks addressed in the Alaska SAR and the Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA stocks addressed in the Pacific SAR) (Caretta *et al.*, 2023; Young *et al.*, 2023).

In the initial notice of the proposed and final IHA, NMFS assumed that humpbacks in the action area were from the Central North Pacific Stock, Western North Pacific Stock, and CA/OR/WA Stock, and therefor authorized take of humpbacks from these stocks. Based on the revised stock designations, no take of WNP stock whales would occur, and in the proposed renewal IHA humpback whales are now assumed to be members of either the Hawai'i stock or the Mexico-North Pacific stock, which corresponds with the takes previously authorized for the Central North Pacific Stock and CA/OR/WA Stocks, respectively. However, based on the work remaining in the renewal IHA, the takes proposed for authorization through this renewal would only be from the Hawai'i stock. In southeast Alaska, it is likely that only 2% of humpbacks would be from the Mexico-North Pacific stock, and based on the proportionally reduced take in this renewal, there are no calculated takes of the Mexico-North Pacific stock. Therefor in this

renewal IHA, we propose to authorize take only of the Hawai'i stock of humpback whale.

NMFS has reviewed the preliminary monitoring data from the initial IHA, recent draft and final Stock Assessment Reports including the updated humpback whale stock structure, and determined that neither this nor any other new information affects which species 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 (88 FR 9227, February 13, 2023).

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 the authorization of take is proposed here may be found in the notice of the proposed IHA for the initial authorization (88 FR 9227, February 13, 2023). 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 (88 FR 9227, February 13, 2023; 88 FR 19927, April 4, 2023). 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, methods of take, daily take estimates and types of take remain unchanged from the initial IHA. The number of takes proposed for authorization 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. Takes are calculated using the same methodology as the initial IHA, and are just a proportion of the initial takes based on the days of work remaining.

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

Species	Stock	Proposed Level A Take	Proposed Level B Take	Percent of stock
Humpback Whale	Hawaii	0	3	<1
	Mexico- North Pacific	0	0	0
	Western North Pacific	0	0	0
Killer Whale	Alaska Resident	0	11	<1
	Gulf of Alaska/Aleutian Islands/Bering Sea Transient	0	3	<1
Dall’s Porpoise	Alaska	4	6	<1
Harbor Seal	Prince William Sound	4	18	<1
Steller Sea Lion	Western United States	0	24	<1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are almost identical to those included in the FR notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate (88 FR 19927, April 4, 2023).

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

- The TMC must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10-m 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 TMC 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;
- TMC 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;
- 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;
- TMC must use soft start techniques when impact pile driving. 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. 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 TMC must employ up to four PSOs to monitor the shutdown and Level B harassment zones during pile driving and DTH activities;
- 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 TMC 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;
- TMC must conduct hydroacoustic monitoring as specified in the initial IHA and submit a hydroacoustic monitoring report;
- The TMC must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS;

- The TMC must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- The TMC must report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 9227, February 13, 2023) and solicited public comments on both our proposal to issue the initial IHA for Whittier Head of the Bay cruise ship dock project and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA for TMC's construction activities or on the potential for a renewal IHA.

Preliminary Determinations

The proposed 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 TMC'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 preliminarily 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 preliminarily 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) TMC'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

The NMFS Alaska Regional Office issued a Biological Opinion under section 7 of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) on the issuance of an IHA and potential renewal IHA to TMC under section 101(a)(5)(D) of the MMPA by the NMFS Office of Protected Resources. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed humpback whales or Steller sea lions.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to TMC for conducting the cruise ship dock construction in Whittier, Alaska, from April 1, 2024 through March 31, 2025, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-turnagain-marine-constructions-cruise-dock-construction>. We request comment on our analyses, the

proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: February 29, 2024.

Angela Somma,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.

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