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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD703]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard's Alaska Facility Maintenance and Repair Activities

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

ACTION: Notice. Issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the United States Coast Guard (Coast Guard), for the unintentional taking of marine mammals incidental to maintenance and repair at facilities in Alaska, over the course of 5 years (2024-2029).

DATES: This LOA is effective from March 1, 2024, through February 28, 2029.

ADDRESSES: The LOA and supporting documentation are available online at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-coast-guards-alaska-facility-maintenance-and-repair>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, 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, a notice of a proposed incidental take authorization may be 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 the species or stocks for taking for certain subsistence uses (referred to as “mitigation”); and requirements pertaining to the mitigation, monitoring, and reporting of the 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.

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 December 20, 2023, we issued a final rule upon request from the Coast Guard for authorization to take marine mammals incidental to construction activities (88 FR 87937). The Coast Guard plans to conduct construction activities for pier maintenance and repair at eight facilities in Alaska. This construction will include use of vibratory pile driving and removal, impact pile driving, and down-the-hole (DTH) drilling. The use of vibratory and impact pile driving and DTH drilling is expected to produce underwater sound at levels that have the potential to result in Level A and Level B harassment of marine mammals.

Authorization

We have issued a LOA to Coast Guard authorizing the take of marine mammals incidental to construction activities, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) required monitoring of the construction area to detect the presence of marine mammals before beginning construction activities; (2) shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and (3) soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Coast Guard will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: March 1, 2024.

Catherine Marzin,

*Acting Director, Office of Protected Resources,
National Marine Fisheries Service.*

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