



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD838]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Skagway Ore Terminal Redevelopment Project in Skagway, Alaska

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

ACTION: Notice; proposed modification of an incidental harassment authorization; request for comments.

SUMMARY: On February 5, 2024, NMFS received a request from the Municipality of Skagway (MOS) to modify an incidental harassment authorization (IHA) that was issued to MOS on August 29, 2023 to take small numbers of eight species of marine mammals, by Level A and Level B harassment, incidental to the Skagway Ore Terminal redevelopment project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to modify the IHA. This modification includes changes to the amount of authorized take by Level B harassment for Steller sea lions and the addition of take by Level A and Level B harassment for the northern fur seal (*Callorhinus ursinus*). There are no changes to the activity, mitigation and monitoring, NMFS' findings, the effective dates of the issued IHA, or any other aspect of the IHA. NMFS will consider public comments prior to making any final decision on the requested modification of the authorization and agency responses will be summarized in the final notice of our decision.

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. Written comments 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 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/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, 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 such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

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) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs 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 has preliminarily determined that the issuance of the proposed modification of the IHA continues to qualify to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice of modification prior to concluding our NEPA process or making a final decision on the request.

History of Request

On August 9, 2022, MOS submitted a request to NMFS requesting an IHA for the take of small numbers of seven species of marine mammals incidental to the Ore Terminal redevelopment project in Skagway, Alaska. On April 18, 2023, NMFS published a **Federal Register** notice (88 FR 23627) for the proposed IHA. On August 29, 2023, NMFS issued an IHA to MOS, and on September 5, 2023, NMFS published a **Federal Register** notice (88 FR 60652) announcing the issuance of the IHA, which is valid from October 1, 2023 through September 30, 2024.

On February 5, 2024, NMFS received a request from MOS to modify the 2023 IHA. MOS subsequently submitted multiple revised IHA modification requests and submitted a final version on March 15, 2024, which NMFS determined to be adequate and complete. In the original IHA issued to MOS, NMFS authorized 2 takes by Level A harassment and 196 takes by Level B harassment for Steller sea lion, and no take by Level A or Level B harassment for northern fur seals.

MOS intended for all work to be conducted from October through March; thus, the species densities, and therefore take requests, proposed in the original request were focused on fall and winter months. However, due to construction delays, construction will not be completed by March 31, 2024, making the original densities inaccurate for the entirety of the construction window, which is now proposed to extend into the spring and summer months as well. Additionally, in the initial review of species likely to be found in the action area, northern fur seal was determined unlikely to be found here. This species has not been previously documented in Skagway and was not expected to appear in the project area; therefore, no take was originally requested. However, a northern fur seal yearling was observed by a Protected Species Observer (PSO) near the project site on multiple occasions in January 2024, causing project shutdowns and delays.

Therefore, the MOS is requesting a modification to the issued authorization to add 2 takes by Level A harassment and 45 takes by Level B harassment for northern fur seal,

and to adjust take requests based on average species densities throughout the year due to work occurring in all seasons and, consequently, increasing authorized take by Level B harassment to 270 for Steller sea lion.

Description of the Proposed Activity and Anticipated Impacts

The modified IHA would include the same construction activities (impact pile driving and vibratory pile driving and removal) in the same locations that were described in the proposed notice of the 2023 IHA (88 FR 23627, April 18, 2023). The monitoring and reporting measures remain the same as prescribed in the initial IHA. Please see the additional relevant documents related to the issuance of the initial IHA, including MOS' application and the notice of issuance of the IHA (88 FR 60652, September 5, 2023) (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-municipality-skagways-skagway-ore-terminal-redevelopment>) for more detailed description of the project activities.

Detailed Description of the Action

A detailed description of the construction activities can be found in the aforementioned documents associated with the issuance of the initial IHA. The location and general nature of the activities are identical to those described in the previous documents. However, as stated in the **History of Request** section, MOS will not complete construction during their planned work window. MOS plans to continue construction past their original construction timeline and work into spring and summer. As of February 7, 2023, MOS conservatively estimates that there are 128 days of construction left. Detailed pile removal and installation quantities left can be found in table 1 and table 2.

Table 1 – Remaining Pile Removal Quantities

Pile Type and size (inches (in))	Quantity remaining
Timber Piles	267
Steel (14-in)	12

Steel (16-in)	51
Steel (24-in)	12
Steel (28-in)	26
Temporary piles (24- in or smaller)	18

Table 2 – Remaining Installation Quantities

Pile Type and size (in)	Quantity remaining
Steel (24-in)	162
Steel (36-in)	21
Steel (48-in)	6
Temporary piles (24- in or smaller)	18

Description of Marine Mammals

A description of the marine mammals in the area of the activities can be found in these previous documents, which remains applicable to this modified IHA as well. In addition, NMFS has reviewed the draft 2023 Stock Assessment Reports (Young *et al.*, 2023; available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>), information on relevant Unusual Mortality Events, and recent scientific literature, and incorporated that into table 3 below.

Table 3 lists all species or stocks for which take is expected and authorized to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’ SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated

within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska Marine Mammal SARs. All values presented in table 3 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

Table 3 -- Species Likely Impacted by the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, Nmin, most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla – Cetacea – Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Humpback whale	<i>Megaptera novaeanglinae</i>	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020)	127	27.09
		Mexico-North Pacific	T, D, Y	918 (0.217, UNK, 2006)	UNK	0.57
Minke whale	<i>Balaenoptera acutorostra</i>	Alaska	-, -, N	UNK	NA	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer whale	<i>Orca orcinus</i>	Eastern North Pacific, Norther Residents, Southeast Alaska	-, -, N	302 (N/A, 302, 2018)	2.2	0.2
		Eastern North Pacific Alaska Residents	-, -, N	1,920 (N/A, 1,920, 2019)	19	1.3
		West Coast Transients	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
		Gulf, Aleutian, Bering Transients	-, -, N	587 (N/A, 587, 2020)	5.9	0.8
Family Phocoenidae (porpoises)						
Harbor Porpoise	<i>Phocoena phocoena</i>	Northern Southeast Alaska Inland Waters	-, -, N	1,619 (0.26, 1,250, 2019)	13	5.6
Dall's porpoise ⁴	<i>Phocoenoides dalli</i>	Alaska	-, -, N	UND (UND, UND, 2015)	UND	37
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller sea lion	<i>Eumetopias jubatus</i>	Western Stock	E, D, Y	49,837 (N/A, 49,837, 2022)	299	267
		Eastern Stock	-, -, N	36,308 (N/A, 36,308, 2022)	2,178	93.2

Northern fur seal	<i>Callorhinus ursinus</i>	Pribilof Island/Eastern Pacific Stock	-,D,Y	626,618 (0.2, 530,376, 2019)	11,403	373
Family Phocidae (earless seals)						
Harbor seal	<i>Phoca vitulina richardii</i>	Alaska- Lynn Canal/Stephens Passage	-, -,N	13,388 (N/A, 11,867, 2016)	214	50
1 - Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.						
2- NMFS marine mammal stock assessment reports online at: https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports . CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.						
3 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.						
4 - Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.						

We have preliminarily determined that no new information affects our original analysis of impacts under the initial IHA. However, as stated above, MOS is requesting to add take by Level A and Level B harassment of northern fur seal. This species was not previously documented in Skagway and was not expected to appear in the project area; therefore, no take was originally requested or authorized in the initial IHA. However, a northern fur seal yearling has been observed near the project site on multiple occasions in January 2024.

Northern Fur Seal

Northern fur seals primarily inhabit open ocean and rocky or sandy beaches on islands for resting, reproduction, and molting (NOAA 2022a). Non-breeding northern fur seals may occasionally haul out on land at other sites in Alaska, British Columbia, and on islets along the west coast of the United States (Fiscus, 1983). During the reproductive season, adult males usually are on shore during the 4-month period from May to August, although some may be present until November. Adult females are on shore during a 6-month period, June to November. Following their respective times ashore, Alaska northern fur seals of both sexes then move south and remain at sea until the next breeding season (Roppel 1984). In Alaska, pups are born during summer months and leave the

rookeries in the fall, on average around mid-November but ranging from late October to early December. Alaska northern fur seal pups generally remain at sea for 22 months (Kenyon and Wilke 1953). There is no relevant site-specific information on northern fur seals in the project area other than the two sightings of one individual in January 2024 by PSOs.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in the documents supporting the final IHA, which remains applicable to the modification of the IHA. NMFS is not aware of new information regarding potential effects.

Estimated Take

A detailed description of the methods and inputs used to estimate authorized take for the specified activity are found in the previous notice (88 FR 60652, September 5, 2023). The types and sizes of piles, ensonified areas and source levels, methods of pile driving, and methods for calculating take remain unchanged from the IHA.

The proposed modification addresses the updated species densities to accommodate work in spring and summer, which would result in increased take by Level B harassment of Steller sea lions. The proposed modification includes work in spring and summer seasons, which were not previously included in the IHA. Therefore, in this modification MOS uses the same density methodology for take calculations but using an annual average density for each species (see revised species densities in table 4). Additionally, this proposed modification adds take by both Level A and Level B harassment for northern fur seal, which were not previously expected to be in the project area. The annual average density estimate for northern fur seal is provided below utilizing the same methodology as all other species in the original IHA.

Table 4 – Density of Marine Mammal Species in the Project Area

Species	Seasonal Density (animals per square kilometer (km ²))				Average Density (animals per km ²)
	Spring	Summer	Fall	Winter	
Humpback whale	0.0081 ¹	0.0117	0.018	0.0081 ¹	0.0115
Minke whale	0.0003 ¹	0.0008	0.0005	0.0003 ¹	0.0005
Killer whale	0.0153	0.005 ²	0.0349	0.005 ²	0.0151
Harbor porpoise	0.01 ³	0.01 ³	0.01 ³	0.01 ³	0.01
Dall's porpoise	0.121 ³	0.121 ³	0.121 ³	0.121 ³	0.121
Harbor seal	1.727 ⁴	0.7811	1.727 ⁴	1.727 ⁴	1.4905
Steller sea lion	0.2662	0.3162	0.2205	0.2662	0.2673
Northern fur seal	0.2763	0	0	0	0.0691

¹Listed density was provided for winter and spring.

²Listed density was provided for winter and summer.

³Listed density was annual average.

⁴Listed density was provided for fall, winter, and spring.

MOS is requesting a modification of the previously issued authorization to add take by Level A and Level B harassment of northern fur seal and to adjust the take requests for other species based on average species densities throughout the year due to work occurring in all seasons. This consequently increases the take by Level B harassment request for Steller sea lion (table 5). No other species take requests are updated in this modification. Additionally, the updated take by Level B harassment of Steller sea lions is only a modification for the Eastern US stock and not the MMPA depleted Western US stock which is equivalent to the listed Western DPS. As per the original IHA and the Biological Opinion, we still only expect take by Level B harassment of 3 individuals from the Western US stock and the remaining 267 from the Eastern US stock.

Table 5 -- Requested Take Amount, per species, Relative to Population Size

	Stock	Level A	Level B	Total Take	Percent of Population
Humpback whale	Hawaii	2	13	15	<1
	Mexico-North Pacific	0	1	1	<1
Minke whale	Alaska	2	6	8	UNK

Killer whale	Eastern North Pacific, Northern Residents, Southeast Alaska; Eastern North Pacific Alaska Residents; West Coast Transients; and Gulf, Aleutian, Bering Transients	2	90	92	2.57
Harbor porpoise	Southeast Alaska	17	75	92	8.9
Dall's porpoise	Alaska	43	193	236	1.8
Harbor seal	Alaska—Lynn Canal/Stephens Passage	193	2,760	2,953	22.14
Steller sea lion	Eastern US + Western US	2	270	272	<1
Northern fur seal	Pribilof Islands/eastern Pacific stock	2	45	47	<1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring and reporting measures are identical to those included in the initial IHA and remain relevant for this modified IHA. These can all be found in the documents supporting the initial final IHA.

Preliminary Determinations

With the exception of the revised take numbers and addition of a new species, the MOS's in water construction activities as well as mitigation and reporting requirements are unchanged from those in the initial IHA. The effects of the activity on the affected species and stocks remain unchanged, notwithstanding the increase to the authorized amount of Steller sea lion take by Level B harassment and addition of take by Level A and Level B harassment of northern fur seal.

The additional takes from Level A and Level B harassment would be due to potential behavioral disturbance, temporary threshold shift (TTS) or permanent threshold shift (PTS). No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the

implementation of the planned mitigation measures (see *Description of Proposed Mitigation, Monitoring and Reporting Measures* section).

The MOS's proposed pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (within Taiya Inlet) of the stock's range. Level A and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Furthermore, the amount of take proposed to be authorized is extremely small when compared to stock abundance.

The additional 74 takes of Steller sea lion represents a minor increase in the percent of stock taken that was authorized in the initial IHA, and the anticipated impacts are identical to those described in the 2023 final IHA. Additionally, this increase is only of the Eastern US stock; no additional takes of the Western US stock are anticipated or proposed for authorization. There is no new information suggesting that our initial analysis or findings should change for Steller sea lions. Separately, the addition of take proposed by Level A and Level B harassment of northern fur seal is less than 0.1 percent of the total stock and therefore this activity will not cause effects on annual rates of recruitment or survival. We have preliminarily determined that the impacts resulting from this activity are not expected to adversely affect annual rates of recruitment or survival for northern fur seals and we preliminarily re-affirm our previous findings for Steller sea lions.

Based on the information 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 proposed authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the proposed authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) MOS'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 (ESA)

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 plan to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

For the original IHA, NMFS Office of Protected Resources completed a Section 7 consultation with the NMFS Alaska Regional Office for the issuance of this IHA on August 23, 2023. The Alaska Regional Office's biological opinion states that the action is not likely to jeopardize the continued existence of the listed species. This modification of the IHA does not modify or change any take of listed species and there for the prior determination remains unchanged.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue a modified IHA to MOS for conducting construction activities associated with the terminal redevelopment in Skagway, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses (included in both this document and the referenced documents supporting the 2023 IHA), the proposed authorization, and any other aspect of this notice of proposed modification of the IHA for the Skagway terminal redevelopment project. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: March 28, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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