



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE522]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to National Oceanic and Atmospheric Administration Office of Marine and Aviation Operations Research Vessel Relocation at Naval Station Newport, Rhode Island

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 the U.S. Navy on behalf of the NOAA Office of Marine and Aviation Operations (OMAO) for the renewal of their currently active incidental harassment authorization (IHA) (hereinafter, the “Project”) to take marine mammals incidental to construction activities associated with the relocation of NOAA research vessels at Naval Station Newport (NAVSTA) in Rhode Island. NOAA OMAO activities are nearly identical to those covered in the current authorization.

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.taylor@noaa.gov. 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 below.

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. 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: Jessica Taylor, 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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is 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 here as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definition of all applicable MMPA statutory used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and the NMFS’s implementing 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 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.

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 a renewal IHA) 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 December 21, 2022, NMFS announced issuance of an IHA to NOAA OMAO to take marine mammals incidental to construction activities associated with vessel relocation at NAVSTA in Newport, RI (87 FR 78072), effective from February 1, 2024 through January 31, 2025. On November 15, 2024, 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

NOAA OMAO's initial IHA authorized take of marine mammals incidental to construction activities associated with NOAA research vessel relocation at NAVSTA in Newport, RI. NOAA OMAO plans to establish adequate pier, shoreside, and support facilities for four NOAA research vessels in Coddington Cove at NAVSTA. All facilities must meet NOAA docking and berthing requirements for the four relocated research vessels. As part of this activity, a new pier, trestle, and bulkhead have been constructed over a total of approximately 191 days. Due to unanticipated delays, NOAA OMAO will be unable to complete the remaining activities before the expiration date of the current IHA. The remaining necessary activities include removal of abandoned guide piles along the bulkhead, demolition of the current floating dock, installation of gangway support piles and fender piles, installation and removal of piles for a construction template, and construction of a small boat floating dock. Vibratory pile driving and removal, impact pile driving, and down-the-hole (DTH) mono-hammer pile installation would be used to complete these remaining construction activities. Approximately 110 days would be necessary to complete these remaining activities.

The potential impacts of NOAA OMAO's proposed activities on marine mammals could involve acoustic stressors and are unchanged from the impacts described in the notice of the proposed 2022 IHA (87 FR 66133, November 2, 2022). Underwater sound resulting from NOAA OMAO's activities has the potential to result in incidental take of marine mammals in the form of Level A harassment and Level B harassment in the specified geographic region.

This proposed renewal IHA is for the remainder of the work that will not be

completed by the expiration date of the initial IHA. The renewal IHA would authorize incidental take, by Level A harassment and Level B harassment, of seven species (comprising seven stocks) of marine mammals for a subset of the construction activities to be completed in 1 year, in the same area, using identical construction methods (vibratory pile driving and removal, impact pile driving, and DTH mono-hammer pile installation) described in the initial IHA. Neither NOAA OMAO nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. The anticipated effects on marine mammals and the affected stocks also remain the same. All mitigation, monitoring, and reporting measures would remain exactly as described in the **Federal Register** notice of the initial IHA (87 FR 78072, December 21, 2022).

Detailed Description of the Activity

A detailed description of the construction activities for which incidental take is proposed here may be found in the notices of the proposed IHA (87 FR 66133, November 2, 2022) and final IHA (87 FR 78072, December 21, 2022) for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are nearly identical to those described in the previous notices. The only differences are in the timing of activities, as described here and in the renewal IHA request. The NOAA OMAO proposed trestle rotary drilling, over a total of 4 in-water work days, and mono-hammer DTH drilling for bulkhead construction, over a total of 12 in-water work days. These actions were not required once construction activities began, thus there was a reduction of 16 in-water work days. In addition, 57 of the 30-inch steel pipe piles for the pier were installed incorrectly. These piles were cut at the mudline, but 57 new 30-inch steel pipe piles needed to be installed instead. The in-water work time for installing the 30-inch steel pipe piles was 4 piles/day, leading to an additional 15 in-water work days than was allotted for these piles. There was also a decrease of 45 in-water

work days due to the ability to use a construction template that accommodates 12 piles instead of 4 piles. Lastly, construction activities did not occur concurrently, as previously proposed, and remaining construction activities are not proposed to occur concurrently. The proposed renewal would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA.

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 **Federal Register** notice of the proposed initial IHA (87 FR 66133, November 2, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events, and other scientific literature and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the descriptions of marine mammals provided in the supporting documents for the initial IHA. Since the initial IHA was issued, NMFS released its final 2023 stock assessment reports (SARs). NMFS has reviewed the 2023 SARs, which included updates to certain stock abundances since the initial IHA was issued, information on relevant unusual mortality events (UME), and other scientific literature. The 2023 SARs updated information related to stock abundance for the common dolphin (172,974 to 93,100), harbor porpoise (95,543 to 85,765), and hooded seal (stock abundance is now unknown based upon uncertainty in available population estimates). Information related to the relatively small portion of the gray seal population found in U.S. waters was also updated. NMFS has determined that neither this nor any other new information affects which species or stocks have the potential to be affected or any other pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

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 an authorization of incidental take is proposed here may be found in the notice of the proposed IHA for the initial authorization (87 FR 66133, November 2, 2022). NMFS has reviewed the monitoring data from the initial IHA, recent SARs, information on relevant Unusual Mortality Events, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (87 FR 66133, November 2, 2022; 87 FR 78072, December 21, 2022). Specifically, the action area and marine mammal density and occurrence data applicable to this authorization remain unchanged from the initial and modified IHA. Similarly, source levels, type of activity, methods of take, and types of take remain unchanged from the initial and modified IHA. However, there are changes to the estimated Level A harassment zones based on the revised amount of piles driven per day and the 2024 draft Technical Guidance, further discussed below. The estimated number of takes proposed for authorization is based on the subset of activities to be completed under this renewal IHA, and therefore represents a proportion of the initial authorized takes. These takes reflect the estimated remaining number of days of work and number of piles to be driven. Estimated take by Level A and Level B harassment was calculated using the same methodology as in the initial and modified IHA.

On October 24, 2024 NMFS published (89 FR 84872) its final Updated Technical Guidance (<https://www.fisheries.noaa.gov/s3/2024-10/Tech-Memo-Guidance-3.0-OCT2024-508-OPR1.pdf>), which includes updated thresholds and weighting functions to

inform auditory injury estimates and is replacing the 2018 Technical Guidance referenced in the notices of the proposed and final IHAs for the initial authorization (87 FR 66133, November 2, 2022; 87 FR 78072, December 21, 2022). In consideration of the best available science, NMFS conducted calculations using the Updated Technical Guidance and NMFS optional user spreadsheet, using the source levels and spreadsheet inputs provided in the notices for the proposed and final IHAs (87 FR 66133, November 2, 2022; 87 FR 78072, December 21, 2022), for the purpose of understanding how Level A harassment (auditory injury) zones might change from the initial IHA. The relevant updated weighting functions may be found in the executive summary of the Updated Technical Guidance NMFS, 2024), on pg. 3. The updated marine mammal hearing groups and updated thresholds can be found in tables 1 and 2.

Table 1. Marine Mammal Hearing Groups (NMFS, 2024)

Hearing Group	Generalized Hearing Range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
Very High-frequency (VHF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	200 Hz to 165 kHz
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on ~65 dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall *et al.*, 2007; Southall *et al.*, 2019. Additionally, animals are able to detect very loud sounds above and below that “generalized” hearing range.

Table 2. Onset of Auditory Injury (AUD INJ) (NMFS, 2024)

Hearing Group	AUD INJ Onset Thresholds* (Received Level)	
	Impulsive <i>Cell 1</i>	Non-impulsive <i>Cell 2</i>
Low-Frequency (LF) Cetaceans	$L_{p,0-pk,flat}$: 222 dB $L_{E,p,LF,24h}$: 183 dB	$L_{E,p,LF,24h}$: 197 dB

High-Frequency (HF) Cetaceans	<i>Cell 3</i> $L_{p,0-pk,flat}$: 230 dB $L_{E,p,HF,24h}$: 193 dB	<i>Cell 4</i> $L_{E,p,HF,24h}$: 201 dB
Very High-Frequency (VHF) Cetaceans	<i>Cell 5</i> $L_{p,0-pk,flat}$: 202 dB $L_{E,p,VHF,24h}$: 159 dB	<i>Cell 6</i> $L_{E,p,VHF,24h}$: 181 dB
Phocid Pinnipeds (PW) (Underwater)	<i>Cell 7</i> $L_{p,0-pk,flat}$: 223 dB $L_{E,p,PW,24h}$: 183 dB	<i>Cell 8</i> $L_{E,p,PW,24h}$: 195 dB
Otariid Pinnipeds (OW) (Underwater)	<i>Cell 9</i> $L_{p,0-pk,flat}$: 230 dB $L_{E,p,OW,24h}$: 185 dB	<i>Cell 10</i> $L_{E,p,OW,24h}$: 199 dB

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 μ Pa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript “flat” is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

NMFS has also considered whether modifications to mitigation requirements, *i.e.*, shutdown zones, would be appropriate in light of the Updated Technical Guidance. Based on the outcome of these analyses using the Updated Technical Guidance, updated Level A harassment zones are presented in table 3 as well as the Level A harassment zones from the initial IHA, based on the 2018 Technical Guidance, for comparison. Mitigation zones, in consideration of the Updated Technical Guidance where appropriate, are discussed in *Description of Proposed Mitigation, Monitoring, and Reporting Measures section*. Although some estimated Level A harassment zones have increased using the 2024 guidance, consistent with the initial IHA, take by Level A harassment for these species is not expected to exceed the amount of take initially authorized, in consideration of the reduced number of days of construction activity remaining. Maximum distances to

the Level A harassment threshold for remaining construction activities are shown in table

3.

Table 3. Remaining Construction Activities and Maximum Distances to the Level A Harassment Thresholds

Structure	Pile size/type	Number of piles	Activity	Total days	Level A harassment distance (m) (auditory injury onset) ¹		
					Hf cetaceans ²	Vhf cetaceans ²	Phocids
Abandoned guide piles along bulkhead	12-inch steel pipe pile	3	Vibratory extract (non-impulsive)	1	1.8 (0.3)	3.9 (5.3)	6.2 (2.2)
Floating dock demolition	12-inch timber pile	4	Vibratory extract (non-impulsive)	1	1.4 (0.2)	3.0 (4.0)	4.7 (1.7)
Fender Piles	16-inch steel pipe template pile	96	Vibratory install/extract (non-impulsive)	48	5.0 (1.1)	10.6 (18.7)	16.8 (7.7)
	16-inch steel pipe pile	201	Vibratory install (non-impulsive)	48	6.6 (0.9)	13.9 (14.3)	22.0 (5.9)
Gangway support piles ³	18-inch steel pipe pile	4	Vibratory/impact (non-impulsive/impulsive)	2	4.1 (0.7)	8.8 (11.8)	13.8 (4.8)
		4	Impact install (impulsive)	2	68.8 (19.3)	834.6 (644.8)	479.1 (289.7)
Small Boat Floating Dock	36-inch steel casing/shaft guide pile with rock socket	2	Vibratory install (non-impulsive)	2	30.4 (5.2)	64.6 (86.6)	101.8 (35.6)
		2	Impact install (impulsive)	2	127.0 (35.5)	1,539.8 (1,189.5)	883.9 (534.4)

		2	DTH mono-hammer (impulsive/non-impulsive)	2	260.9 (73.0)	3,164.2 (2,444.5)	1,816.5 (1,098.2)
	16-inch steel pipe template pile	4	Vibratory install/extract (non-impulsive)	2	6.6 (1.1)	13.9 (18.7)	22.0 (7.7)

¹ Level A harassment zones from the initial IHA are shown in parentheses.

² Hf cetaceans = high-frequency cetaceans; vhf cetaceans = very high frequency cetaceans

³ Gangway support piles would be in support of the small boat floating dock.

In this proposed renewal, use of the Updated Technical Guidance results in changes to the estimated Level A harassment zones, but there are no changes to the estimated Level B harassment zones. The updated Level A harassment zones are used to inform our understanding of potential take by Level A harassment. In table 4, total take numbers are based on the methodology that was included in the previous authorizations, incorporating the previously described changes (number of piles per day and the Updated Technical Guidance). Takes are a proportion of the initial authorized takes and based on the days of work included in this renewal IHA. Level A harassment numbers have been held constant in reflection of the increases to estimated Level A harassment zone sizes. Proposed mitigation zones, in consideration of the updated isopleths, are discussed in the **Proposed Mitigation** section.

The number of takes proposed for authorization are a subset of the initial authorized takes, reflective of the updated generalized hearing ranges and distances to the Level A harassment threshold. The source levels, stocks taken, density values, methods of take, and types of take remain unchanged from the initial IHA. Estimated takes by Level A harassment and Level B harassment, based upon the number of remaining in-water work days, are indicated in table 4.

Table 4. Proposed Number of Takes Level A Harassment and Level B Harassment, by Species and Stock and Percent of Take by Stock

Species	Scientific name	Stock	Abundance	2022 authorized take		2024 proposed renewal	
				Take by Level A harassment	Take by Level B harassment	Proposed take by Level A harassment	Proposed take by Level B harassment
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233 ¹	0	16	0	(3) 16 ²
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	93,100 ¹	0	39	0	(10) 28 ²
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	85,765 ¹	2	40	2	11
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	61,336	56	2,067	56	536
Gray seal	<i>Halichoerus grypus</i>	Western North Atlantic	27,911 ³	11	437	11	113
Harp seal	<i>Pagophilus groenlandicus</i>	Western North Atlantic	7.6 M	4	164	4	43
Hooded seal	<i>Cystophora cristata</i>	Western North Atlantic	UNK	0	10	0	5 ⁴

¹ This estimate has been updated in the 2023 final stock assessment report.

² Proposed take has been increased to mean group size (NUWC, 2017) for each species for which take estimates are less than mean group size. Calculated take estimate is in parentheses.

³ This abundance estimate applies to the U.S. population only. The maximum percent population requested for take is based upon the total stock abundance for the U.S. and Canada which is approximately 394,311 seals.

⁴ In the initial IHA, NOAA OMAO conservatively requested 1 take by Level B harassment of hooded seal per month of construction when this species may occur in the project area (January through May). Although NOAA OMAO estimated 1 take by Level B harassment of hooded seal for this renewal request, NMFS has increased this proposed take to 1 take by Level B harassment of hooded seal per month, January through May.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures proposed here are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (87 FR 78072, December 21, 2022). In addition, the discussion of the least practicable adverse impact included in those documents as well as the notice of the proposed IHA

(87 FR 66133, November 2, 2022) remains accurate. NMFS proposes the following measures for this renewal IHA:

Implementation of shutdown zones: Marine mammal shutdown zones must be implemented for all pile driving activities. As shutdown zones are based upon the Level A harassment zone for each pile type/size and activity, shutdown zones have been updated since the issuance of the initial IHA (87 FR 78072, December 21, 2022) and are shown in table 5. However, as in the initial IHA, required shutdown zones would be limited to a radial distance of 200 m from the acoustic source (87 FR 78072, December 21, 2022). Shutdown zones must be implemented and monitored by NMFS-approved protected species observers (PSOs) as follows:

- A minimum shutdown zone of 10 m would be applied for all in-water construction activities if the Level A harassment zone is less than 10 meters (m);
- If an activity 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 indicated in table 4 or 15 minutes have passed without re-detection of the animal; and
- Construction activities must be halted upon observation of 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.

If a marine mammal enters the Level B harassment zone, in-water work would proceed and PSOs would document the marine mammal's presence and behavior. Level B harassment zones remain unchanged since issuance of the initial IHA and are shown in table 12 of the **Federal Register** notice of the final IHA (87 FR 78072, December 21, 2022).

Table 5. Shutdown Zones by Activity

Pile type/size	Driving method	Shutdown zone (m)	
		Cetaceans	Pinnipeds
12-inch steel pipe	Vibratory	10	10
12--inch timber	Vibratory extraction	10	10
16--inch steel pipe	Vibratory install/extract	15	22
18--inch steel pipe	Impact install	200 ¹	200 ¹
	Vibratory install	10	15
36--inch steel pipe	Impact install	200 ¹	200 ¹
	Vibratory install	65	102
36-inch shafts	DTH Mono- hammer	200 ¹	200 ¹

¹ Distance to shutdown zone distances limited to 200 m from the acoustic source, as described in the **Federal Register** notices for the proposed and final initial IHA (87 FR 66133, November 2, 2022; 87 FR 78072, December 21, 2022).

Visual Monitoring - Monitoring must be conducted by NMFS-approved PSOs with minimum qualifications as described in the **Federal Register** notices for the proposed and final initial IHA (87 FR 66133, November 2, 2022; 87 FR 78072, December 21, 2022). Visual monitoring would be conducted by a minimum of two trained PSOs positioned at suitable vantage points. Any activity for which the Level B harassment isopleth would exceed 1,900 meters would require a minimum of three PSOs to effectively monitor the entire Level B harassment zone. Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. PSOs would likely be located on Gould Island South, Gould Island Pier, Coddington Point, Bishop Rock, Breakwater, or Taylor Point as shown in figure 11-1 in the application for the initial IHA. The lead observer would be required to have prior experience working as

a marine mammal observer during construction. All PSOs would have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cell phones for maintaining contact with work crews.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Pre-start Clearance Monitoring - Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would monitor the shutdown, Level A harassment, and Level B harassment for a period of 30 minutes. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed within the shutdown zones listed in table 4, construction activity would be delayed until the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in table 4 or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities would begin or continue, and an observation of the marine mammal occurrence in the Level B harassment zone would be recorded. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters are visible). If the shutdown zone is obscured by fog or poor lighting conditions, in-water construction activity would not be initiated until the entire shutdown zone is visible.

Soft Start - Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Hydro-acoustic Monitoring - NOAA OMAO would implement in situ acoustic monitoring efforts to measure sound pressure levels (SPLs) from in-water construction activities by collecting and evaluating acoustic sound recording levels during activities. Stationary hydrophones would be placed 33 ft (10 m) from the noise source, in accordance with NMFS' most recent guidance for the collection of source levels. If there is the potential for Level A harassment, a second monitoring location would be set up at an intermediate distance between cetacean/phocid shutdown zones and Level A harassment zones. Hydrophones would be deployed with a static line from a stationary vessel. Locations of hydro-acoustic recordings would be collected via GPS. A depth sounder and/or weighted tape measure would be used to determine the depth of the water. The hydrophone would be attached to a weighted nylon cord or chain to maintain a constant depth and distance from the pile area. The nylon cord or chain would be attached to a float or tied to a static line.

Each hydrophone would be calibrated at the start of each action and would be checked frequently to the applicable standards of the hydrophone manufacturer. Environmental data would be collected, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the

airborne and underwater sound levels (*e.g.*, aircraft, boats, *etc.*). The chief inspector would supply the acoustics specialist with the substrate composition, hammer or drill model and size, hammer or drill energy settings and any changes to those settings during the piles being monitored, depth of the pile being driven or shaft excavated, and blows per foot for the piles monitored. For acoustically monitored piles and shafts, data from the monitoring locations would be post-processed to obtain the following sound measures:

- Maximum peak pressure level recorded for all the strikes associated with each pile or shaft, expressed in dB re 1 μ Pa. For pile driving and DTH mono-hammer excavation, this maximum value would originate from the phase of pile driving/drilling during which hammer/drill energy was also at maximum (referred to as level 4); and
- From all the strikes associated with each pile occurring during the level 4 phase these additional measures would be made: mean, median, minimum, and maximum root mean square (RMS) pressure level in [dB re 1 μ Pa]; mean duration of a pile strike (based on the 90 percent energy criterion); and number of hammer strikes. The cumulative SEL would be computed from all the strikes associated with each pile occurring during all phases, (*i.e.*, soft-start, level 1 to level 4). This measure is defined as the sum of all single strike SEL values. The sum is taken of the antilog, with log10 taken of result to express in [dB re μ Pa² s].

Hydro-acoustic monitoring would be conducted for at least 10 percent and up to 10 of each different pile type for each method of installation as shown in Table 13-1 in the application for the initial IHA. All acoustic data would be analyzed after the project period for pile driving and DTH mono-hammer excavation events to confirm SPLs and rate of transmission loss for each construction activity.

Training – NOAA OMAO and the Navy shall conduct briefings between construction supervisors and crews, PSOs, NOAA OMAO and Navy staff prior to the start of all pile driving activities and when new personnel join the work. These briefings would explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Reporting - PSOs must record specific information as described in the **Federal Register** notice of the issuance of the initial IHA (87 FR 78072, December 21, 2022). NOAA OMAO would submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. If no comments are received from NMFS within 30 days, the draft report would constitute the final report. If comments are received, a final report addressing NMFS' comments would be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data would be submitted with the draft marine mammal report. NOAA OMAO must also provide a hydro-acoustic monitoring report based upon hydro-acoustic monitoring conducted during construction activities as described in the **Federal Register** notice for the issuance of the initial IHA (87 FR 78072, December 21, 2022).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, NOAA OMAO would report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the Northeast Region (GARFO) regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, NOAA OMAO would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure

compliance with the terms of the IHAs. NOAA OMAO would not resume their activities until notified by NMFS.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (87 FR 66133, November 2, 2022) and solicited public comments on both our proposal to issue the initial IHA for construction activities associated with the relocation of NOAA vessels to NAVSTA and on the potential for a renewal IHA, should certain requirements be met. No public comments were received on the proposed IHA.

Preliminary Determinations

NOAA OMAO's activities are a subset but otherwise unchanged from those analyzed in support of the initial IHA. The effects of the activity, taking into consideration the proposed mitigation and related monitoring measures, remain unchanged from those evaluated in support of 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. This includes consideration of the updated acoustic guidance resulting in updated distances to the Level A harassment thresholds and estimated abundance of common dolphin and harbor porpoise stocks decreasing slightly based upon the 2023 SAR. 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) NOAA OMAO'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

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 proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this proposed action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to NOAA OMAO for conducting construction activities associated with NOAA vessel relocation at NAVSTA in Newport, RI through January 31, 2026, 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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. 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 this renewal IHA.

Dated: January 17, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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