



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF216]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Alaska Department of Transportation and Public Facilities' Cold Bay Ferry Terminal Reconstruction Project in Cold Bay, Alaska

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Alaska Department of Transportation and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to the Cold Bay Ferry Terminal Reconstruction Project in Cold Bay, Alaska.

DATES: This Authorization is effective from May 1, 2028, through April 30, 2029.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

MMPA Background and Determinations

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Among the exceptions is section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) which directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking by harassment 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 the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS will issue an IHA if it 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”). NMFS must also prescribe requirements pertaining to the monitoring and reporting of such takings. The definitions of key terms, such as “take,” “harassment,” and “negligible impact,” can be found in the MMPA and the NMFS' implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

On December 29, 2025, a notice of NMFS’ proposal to issue an IHA to ADOT&PF for the taking of marine mammals incidental to the Cold Bay Ferry Terminal Reconstruction Project in Cold Bay, Alaska was published in the **Federal Register** (90 FR 60653). In that notice, NMFS indicated the estimated numbers, type, and methods of incidental take proposed for each species or stock, as well as the mitigation, monitoring, and reporting measures that would be required should the IHA be issued. The **Federal Register** notice also included analysis to support NMFS’ preliminary conclusions and determinations that the IHA, if issued, would satisfy the requirements of section

101(a)(5)(D) of the MMPA for issuance of the IHA. The **Federal Register** notice included web links to a draft IHA for review, as well as other supporting documents.

No comments were received during the public comment period. With the exception of the minor changes described below, there are no substantive changes to the specified activity, the species taken, the proposed numbers, type, or methods of take, or the mitigation, monitoring, or reporting measures in the proposed IHA notice.

Furthermore, no new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHA notice has become available since that notice was published; therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHA are considered final.

Changes from the Proposed IHA to the Final IHA

NMFS made a few minor changes to the IHA based on input received from ADOT&PF during the public comment period. The first included the removal of the word “lead” in IHA measure 4(c) when describing the start-of-shift determination related to the pre-clearance monitoring to ensure that visibility is sufficient for PSO monitoring. As a Lead PSO is not required at all times, the inclusion of this could pose a logistical challenge for the project. With this change, any on-duty PSO can make the appropriate decision for the start of activities, upon completion of the required pre-clearance monitoring period.

The other change was related to an inadvertent inclusion of an incorrect 500-meter (m) (1,640 feet (ft)) shutdown zone for harbor seals (*Phoca vitulina*), specifically during impact pile driving of the 36-inch (in) (91-centimeter (cm)) trestle support piles, the 24-in (61-cm) to 36-in (91-cm) temporary trestle piles, the 36-in (91-cm) dock support pile, the 24-in (61-cm) to 36-in (91-cm) temporary dock piles, and the 36-in (91-cm) dolphin piles. Given the small size and cryptic behavior of this species, individuals may be difficult to see at a distance greater than 300 m (984 ft); therefore, this has been

changed to a 300-m (984 ft) shutdown zone for harbor seals in table 2 of the final IHA. This is also in alignment with the shutdown zone for other small species during impact pile driving (*i.e.*, harbor porpoises (*Phocoena phocoena*) and Steller sea lions (*Eumetopias jubatus*)).

Lastly, NMFS corrects a few errors in the total number of takes by Level B harassment for Steller sea lions, harbor porpoises, and harbor seals. The correct value for Steller sea lions should have been 3,465 total estimated exposures, minus 14 takes by Level A harassment, which equates to 3,451 takes by Level B harassment. For harbor porpoises, the correct value should have been 95 takes, given that the original 73 takes by Level A harassment were reduced to 4 and should have been added to the takes by Level B harassment to equal 95 (26 + 69). Similarly for harbor seals, the reduced number of takes by Level A harassment (from 744 to 50) should have been added to the takes by Level B harassment to equal 2,260 (694 + 1,560). This means that the total percentage of the population/stock expected to be taken now equates to 6.96 percent for Steller sea lions, 0.32 percent for harbor porpoises, and 8.13 percent for harbor seals, all of which are still below NMFS' threshold for small numbers. We have corrected these in the final IHA and carry them forward here.

None of these minor updates change NMFS' analysis, the findings, or final determinations, as previously described.

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 NAO 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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

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 ensures 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, in this case, with NMFS' Alaska Regional Office.

There are two ESA-listed marine mammal species, consisting of three stocks, with confirmed occurrence in the project area: the Mexico DPS and Western North Pacific DPS of humpback whales, and the Western DPS of Steller sea lions. NMFS requested consultation under section 7 of the ESA on December 19, 2025. The NMFS Alaska Regional Office Protected Resources Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of humpback whales (both the Mexico DPS and the Western DPS) and Steller sea lions (Western DPS), and is not likely to destroy or adversely modify critical habitat for this species.

Authorization

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued an IHA to ADOT&PF for authorization to take marine mammals incidental to the Cold Bay Ferry Terminal Reconstruction Project in Cold Bay, Alaska.

Dated: March 16, 2026.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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