Billing Code

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–ES–2024–0195; FXES111607MRG01–267–FF07CAMM00]

RIN 1018–BI08

Marine Mammals; Incidental Take of Northern Sea Otters During Specified Activities; Seward, Sitka, and Kodiak, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service, finalize incidental take regulations that facilitate the authorization of nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters during marine construction and pile driving in Seward, Sitka, and Kodiak, Alaska. Incidental take of northern sea otters may result from in-water noise generated during pile driving and marine construction activities. This rule is effective for 5 years from the date of issuance.

DATES: *Effective date*: This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and remains effective through March 27, 2031.

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this rule in the Federal Register. Therefore, comments should be submitted to OMB by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may view this rule, the associated final environmental assessment and finding of no significant impact (FONSI), comments received, and other supporting material at https://www.regulations.gov under Docket No. FWS–R7–ES–2024–0195, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Information Collection Requirements: This final rule is effective on the date set forth in **DATES**. We will, however, accept and consider all public comments concerning the information collection requirements received in response to this final rule. Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document to https://www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or Info_Coll@fws.gov (email). Please reference "OMB Control Number 1018–BI08/OMB Control No. 1018–0205" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Stephanie Burgess, by email at r7mmmregulatory@fws.gov or by telephone 907–786–3800. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

In accordance with the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1371(a)(5)(A)) and its implementing regulations, we, the U.S. Fish and Wildlife Service (hereafter FWS or we), finalize incidental take regulations (ITR) that facilitate the authorization

of nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters (*Enhydra lutris kenyoni*) during pile driving and marine construction in Seward, Sitka, and Kodiak, Alaska. This rule will be effective for 5 years from the date of issuance.

This rule sets forth permissible methods of incidental nonlethal taking, mitigation measures to ensure the least practicable adverse impacts upon this species, its habitat, and the availability of this species for subsistence uses, and requirements for monitoring and reporting. This rule is based on our findings that the total takings of sea otters during pile driving and marine construction activities will impact only small numbers of animals, will have a negligible impact on this species, and will not have an unmitigable adverse impact on the availability of this species for subsistence use by Alaska Natives. We base our findings on data from research on this species; potential and documented effects on this species from similar activities; information regarding the natural history and conservation status of sea otters; and data reported from Alaska Native subsistence hunters. We also prepared an environmental assessment (EA) in accordance with National Environmental Policy Act (NEPA) requirements for this rulemaking and, after consideration of public comments, made a finding of no significant impact (FONSI).

Immediate Promulgation

In accordance with the Administrative Procedure Act (5 U.S.C. 553(d)(3)), we find that we have good cause to make this rule effective less than 30 days after publication. Making this rule effective immediately will shorten the amount of time USCG ships must use temporary moorings that do not provide full services. Utilization of these temporary moorings requires funds that would otherwise be used for permanent waterfront construction and subjects ships to greater risk of damage. Thus, there is good cause to make this rule effectively immediately in order to facilitate USCG's transition of ships to permanent moorings that will reduce costs and risk of damage to the ships.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of certain marine mammals, in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18 (at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the FWS. According to the MMPA, the FWS shall allow this incidental taking for a period of up to 5 consecutive years if we find that the total of such taking:

(1) will affect only small numbers of individuals of the species or stock;

(2) will have no more than a negligible impact on the species or stock; and

(3) will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue regulations that set forth the following, where applicable:

(a) permissible methods of taking;

(b) means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and

(c) requirements for monitoring and reporting of such taking.

If final regulations allowing such incidental take are issued, we may then subsequently issue letters of authorization (LOA), upon request, to authorize incidental take during the specified activities.

The term “take” means to “harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal” (16 U.S.C. 1362(13)). Harassment for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance that has the potential to injure a

marine mammal or marine mammal stock in the wild (the MMPA defines this as "Level A harassment"), or 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 (the MMPA defines this as "Level B harassment") (16 U.S.C. 1362(18)).

The U.S. Coast Guard's (hereafter USCG or the applicant) activities may result in the incidental taking of sea otters. The MMPA does not require that the USCG obtain incidental take authorization prior to conducting these activities; however, any incidental taking that occurs without authorization is a violation of the MMPA. An ITR was issued to the USCG for pile driving and marine construction activities at multiple locations in Alaska including Seward, Sitka, and Kodiak from May 19, 2023, through May 19, 2028 (88 FR 24115, April 19, 2023). The specified activities described in this final ITR are outside the scope of the 2023–2028 USCG ITR, and, therefore, the USCG submitted requests for the incidental take of sea otters during their planned activities. This final rule confirms the preliminary determinations made in the proposed rule (90 FR 26486, June 23, 2025) and amends regulations that are codified at 50 CFR part 18, subpart I (§§ 18.100 to 18.110).

Summary of Request and the Proposed Rule

On March 5, 2024, the FWS received a request prepared by Weston Solutions on behalf of the USCG for the nonlethal, incidental harassment of small numbers of northern sea otters (*Enhydra lutris kenyoni*) (hereafter sea otters unless another sea otter subspecies is specified) from the Southwest Alaska stock that may occur during pile driving and marine construction activities in Womens Bay, Kodiak, Alaska. During discussion with the applicant, a request prepared by WSP Environment and Infrastructure on behalf of the USCG (received January 19, 2024) for the nonlethal, incidental harassment of small numbers of sea otters from the Southcentral Alaska stock that may occur during pile driving and marine construction activities in Seward was combined with the USCG's request prepared by Weston Solutions. Additionally,

a request prepared by WSP Environment and Infrastructure on behalf of the USCG (received January 19, 2024) for the nonlethal, incidental harassment of small numbers of sea otters from the Southeast Alaska stock that may occur during pile driving and marine construction activities in Sitka was then merged with the USCG's combined request. The USCG provided additional information regarding project activities, timelines, and mitigation measures for their planned activities in Kodiak, Seward, and Sitka requested by the FWS during correspondence. On October 2, 2024, the FWS received a revised application for activities in Kodiak (hereafter referred to as "Weston Solutions 2024 Request"). On October 3, 2024, the FWS received a revised application for activities in Seward and Sitka (hereafter referred to as "WSP Environment and Infrastructure 2024 Request"). The FWS determined USCG's combined request for activities in Kodiak, Seward, and Sitka to be adequate and complete on October 3, 2024.

Based on our analyses, we published a proposed rule for these ITRs on June 23, 2025 (90 FR 26486). The preamble to the proposed rule provided information on several issues, including the following topics:

- sea otter biology and stocks within the specified region;
- potential impacts to sea otters arising from the specified activities, including effects of underwater and airborne sounds, vessel presence, effects to prey, reactions of sea otters to anthropogenic activities, and consequences of disturbance;
- potential impacts of the specified activities on subsistence uses of sea otters;
- the definitions of incidental take under the MMPA as well as definitions of "negligible impact," "unmitigable adverse impact," "small numbers," and "least practicable adverse impact;"
- methods of analyzing and estimating take by harassment;
- critical assumptions of the analyses; and
- a breakdown of incidental take by harassment at each project location.

Please see the June 23, 2025 (90 FR 26486) proposed rule for further background information

related to this rulemaking action.

Response to Comments

During the public comment period, we requested written comments from the public on the proposed rule as well as the draft EA. The comment period opened June 23, 2025, and closed July 23, 2025. We received seven comment submissions on the proposed rule.

Response to Comments

Comment: One commenter stated that permanent threshold shift (PTS) noise thresholds were based on outdated information and should be updated to include the National Marine Fisheries Service's (NMFS) revised thresholds for cumulative sound exposure in the 2024 Update to: Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (NMFS 2024).

Response: We are evaluating the new auditory injury criteria presented in the NMFS (2024) technical guidance to determine whether they are appropriate for FWS trust species. Sea otters, particularly, are not exposed to sound for an entire 24-hour period. On the contrary, activity budgets indicate they are likely to spend an average of 50 percent of their day with their heads above water (Garshelis et al. 1986). Pending the outcome of these evaluations, FWS will continue to use the previous version of the technical guidance (NMFS 2018) in our estimates of potential harassment via in-water noise exposure.

Comment: One commenter stated that the FWS should calculate the harassment zones and ensonified areas caused by in-air noise in addition to those caused by in-water noise, using the weighting functions presented in NMFS (2024) technical guidance.

Response: The FWS has stated in the *Critical Assumptions* of the proposed rule's preamble (90 FR 26486 at 26506, June 23, 2025) that while in-air noise will occur during the specified activities, harassment zones and ensonified areas attributable to in-air noise will be smaller than those caused by in-water noise, and based on the assumption that a sea otter may be

harassed only one time per 24-hour period, we conservatively rely on in-water calculations to estimate potential take.

Comment: One commenter stated that the FWS should use the NMFS continuous sound threshold of 120 decibels (dB) re 1 micropascal (μPa) instead of the 160 dB re 1 μPa we currently use. In their comment, they state the underlying research used to generate both the 120 dB re 1 μPa continuous threshold and the 160 dB re 1 μPa impulsive threshold are based on gray whale studies, and thus it is inappropriate to dismiss the 120-dB threshold while accepting the 160-dB threshold. They further cite the Parsons Slough project observations as support that sea otters have been reported to exhibit behavioral responses to vibratory pile driving noise less than 160 dB re 1 μPa.

Response: The highest spectral densities for noises generated by vibratory pile driving lie within a range of frequencies at which sea otters have poor hearing ability. In contrast, gray whales, on which the 120-dB threshold is based, are highly sensitive to sounds within this frequency range. We do not dispute that sea otters may hear and may react to noise produced by vibratory pile driving. However, we maintain that it is unlikely that sea otters' reactions will be equivalent to those of gray whales in terms of the noise levels that elicit reactions equivalent to take by harassment. Thus, it is not appropriate to apply the 120-dB threshold to sea otters.

The FWS disagrees with the Marine Mammal Commission's (MMC) conclusions regarding the project in Parsons Slough (ESNERR 2011). After considering the MMC's comments and reviewing the monitoring data (ESNERR 2011 and ESNERR unpublished data 2018), we reaffirm our statement that project-related monitoring of sea otter behavior in areas exposed to underwater sound levels ranging from approximately 135–165 dB during vibratory pile driving (ESNERR 2011) showed no clear pattern of disturbance or avoidance in relation to these levels of underwater sound exposure.

As such, we maintain that use of a 160-dB threshold for both impulsive and non-impulsive sounds is consistent with the best available scientific information.

Comment: One commenter (the MMC) stated that it is inaccurate to associate takes by Level B harassment with temporary threshold shifts (TTS) and recommended that the FWS remove reference to Level B harassment being due to TTS.

Response: The FWS thanks the MMC for their comment and has modified the characterization of Level B harassment events and the likelihood of TTS in the final rule.

Comment: One commenter (the MMC) stated that the applicants did not include all of the necessary details to estimate the Level A harassment and Level B harassment zones and the FWS did not provide that information either.

Response: The FWS thanks the MMC for their comment and has made the application materials and calculation spreadsheets publicly available on the docket at https://www.regulations.gov/docket/FWS-R7-ES-2024-0195.

Comment: One commenter (the MMC) stated that some sound source levels used in the applications and proposed rule were inappropriate and recommended using 144 dB re 1 µPa for the single strike sound exposure level (SEL_{ss}) source level for impact driving of 13-inch composite piles and subsequently revising the Level A harassment zones for the final rule. They also recommended that the FWS use 161 dB re 1 µPa for vibratory installation of 24-inch steel piles and 167 dB re 1 µPa for vibratory installation of 30-inch steel and vibroflot piles and subsequently revise the Level A harassment and Level B harassment zones.

Response: The FWS thanks the MMC for their comment and recognizes the error in the single strike SEL that was used for the calculation of harassment thresholds of impact pile driving of 13-inch composite/plastic piles. The recommendation from the MMC is for a lower single strike SEL that will result in a smaller Level A harassment threshold than what was proposed, and which will still be encompassed by the applicant's proposed 30-meter shutdown zone, so no changes needed to be made to the final rule in response to this comment.

The FWS consulted with the acousticians at the NMFS Office of Protected Resources to determine the most appropriate sound levels to use for project activities. For the vibratory

installation of the 24-inch steel piles and 30-inch steel and vibroflot piles, NMFS used the same sound levels in their incidental harassment authorization for the USCG Base Kodiak Homeporting Facility (90 FR 12204, March 14, 2025, and 90 FR 21472, May 20, 2025). We are maintaining these sound levels for estimates in this final rule.

Comment: One commenter (the MMC) stated that the FWS should revise table 16 in the proposed rule (90 FR 26486 at 26507, June 23, 2025) and the accompanying impact analysis to clarify the maximum number of Level A harassment and Level B harassment events in Kodiak in a single year.

Response: The FWS thanks the MMC for their comment. We have described in detail the proposed activities at Base Kodiak by project year in table 3, and further provided the number of harassment events by activity in tables 14 and 15 (90 FR 26486 at 26491 and 26505–26506, June 23, 2025). In table 16, we provide the largest number of potential harassment events that may occur in a calendar year in order to make our small numbers and negligible impacts determinations using the greatest potential annual impact to the Southwest stock of sea otters. This allows the applicant (USCG) to have flexibility when requesting Letters of Authorization and provides a robust analysis of the potential impact to sea otters.

Comment: One commenter (the MMC) stated that the FWS has greater reporting requirements for injured, dead, or distressed sea otters that are not associated with project activities than for unauthorized take of sea otters associated with project activities. They recommend that the FWS include an additional reporting requirement for unauthorized takes of sea otters associated with project activities that matches the reporting requirements for that of injured, dead, or distressed sea otters not associated with project activities.

Response: The FWS thanks the MMC for their input and has adopted this recommendation in the final rule and in all future incidental take authorizations.

Comment: One commenter stated that the FWS has not sufficiently documented substantive Tribal consultation or engagement and that the positions of Tribes calling for more

robust co-management authority has not been acknowledged. They recommend Tribal oversight of project activities.

Response: The FWS has not received any new co-management proposals or requests for sea otters.

The USCG has conducted significant outreach to Tribal organizations. For the work in Kodiak, early public scoping was initiated in September 2020 by sending letters out to a robust contact list announcing the initiation of environmental processes and studies. In 2021, National Historic Preservation Act section 106 consultation was initiated with Alaska Native Tribes and the State Historic Preservation Office. The USCG has also coordinated with Alaska Native Tribes, Villages, and Corporations in the Kodiak area and worked closely with one Tribe to address concerns related to subsistence species, Tribe-led monitoring during and after construction, and best management and reporting requirements to include in the project.

For the work in Seward, the USCG initiated stakeholder consultation with federally recognized Tribes and Alaska Tribal organizations. Consultation request letters were sent out to Alaska Native organizations, but no replies were received.

For the work in Sitka, the applicant performed consultation with the Sitka Tribe of Alaska—the ancestral inhabitants of Japonski Island where USCG Air Station Sitka is located. They performed a full, detailed section 106 and Executive Order (E.O.) 13175 consultation and worked with the Tribe to identify sacred sites, develop archaeological monitoring plan, and had them as full signatories to a memorandum of agreement to mitigate adverse impacts to cultural resources. The consultation was detailed in section 1.6.7 and 3.5.3.2 of the National Environmental Policy Act (NEPA) compliant environmental assessment (USCG 2024).

Comment: One commenter stated that the proposed rule does not specify spatial and temporal buffers to protect sea otters during sensitive time periods and recommends the FWS impose restrictions to account for subsistence activity and known haul-out areas.

Response: Sea otters are hunted year-round by coastal-dwelling Alaskan Natives; however, as is discussed in the preamble to the proposed rule, the geographic areas in question are immediately adjacent to active USCG facilities, and as such do not allow hunting nearby. Similarly, there is no significant temporal pattern to sea otter pupping in the geographic areas—sea otters pup year-round. The FWS has described in detail the relevant shutdown and monitoring zones that the applicant will implement in § 18.107 below in **Regulation Promulgation**.

Comment: One commenter stated that the proposed rule's monitoring requirements are insufficient and recommends independent third-party oversight of project activities, incident reports and take logs, and take estimates and LOA renewals.

Response: All reports of project activities, protected species observer (PSO) logs, LOA requests, issued LOAs, and occurrences of takes of sea otters are publicly available upon request. Third-party observers are not required by the MMPA.

Comment: One commenter stated that due to the change in administration, the FWS has used a circular definition of the small numbers determination and that it is unscientific to expect that regulators will recognize a small number when they see it.

Response: The FWS disagrees. The description of the small numbers determination has not changed. This methodology of determining whether or not a project meets the small numbers determination has been effectively used in numerous incidental take authorizations.

The remaining four comments were not substantive. They expressed support for the protection of sea otters and their ecosystem and general opposition to incidental take authorizations for the take of sea otters.

Summary of Changes from the Proposed Rule

In preparing these final regulations for the incidental take of sea otters, we reviewed and considered comments and information from the public concerning our proposed rule published in the *Federal Register* on June 23, 2025 (90 FR 26486). After the proposed rule was published, we

received new information on project activities and sea otter observation data at the USCG Moorings Sitka location from the applicant, which impacted the estimated ensonified areas and estimated take of Southeast Alaska stock sea otters. We reviewed this new information, revised our estimated take for Southeast Alaska stock sea otters, and reevaluated our findings. The new information on project activities represents a logical outgrowth of the activities originally described in the proposed rule, as they still include pile removal and installation by pile driving. As we describe in our reevaluated findings, the anticipated effect of the revised project on sea otters is similar to that described in the proposed rule and remains limited to no more than a negligible impact on a small number of individuals.

We are finalizing these regulations with the following changes from our proposed rule:

- We modified the characterization of the Level B harassment events and likelihood of TTS.
- We updated our reporting requirements for unauthorized take of sea otters to align with reporting requirements for injured, dead, or distressed sea otters that are not associated with project activities.
- We made available more application materials (as described above) in the docket (https://www.regulations.gov/docket/FWS-R7-ES-2024-0195).
- We revised the USCG Moorings Sitka project activity description, estimated sea otter density, estimated ensonified areas, estimated take of Southeast Alaska stock sea otters, and mitigation measures incorporating the new information on project activities and sea otter observation data for the USCG Moorings Sitka project.
- We reevaluated our findings with the revised information for the USCG Moorings Sitka project.

Description of the Regulations

These regulations facilitate the authorization of nonlethal, incidental, unintentional take of small numbers of sea otters that may result from the proposed activities based on standards set forth in the MMPA. They do not authorize or "permit" activities. The regulations include:

(1) Permissible methods of nonlethal taking;

(2) Measures designed to ensure the least practicable adverse impact on sea otters and their habitat, and on the availability of these species for subsistence uses; and

(3) Requirements for monitoring and reporting.

Description of Letters of Authorization (LOAs)

An LOA is required to conduct activities pursuant to an ITR. Under these ITRs, the USCG may request LOAs for the authorized nonlethal, incidental, Level B harassment and Level A harassment of sea otters. Requests for LOAs must be consistent with the activity descriptions and mitigation and monitoring requirements of the ITR and be received in writing at least 30 days before the activity is to begin. Requests must include (1) an operational plan for the activity, (2) a digital geospatial file of the project footprint, (3) a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters, and, if necessary, (4) plans of cooperation (described below). Once this information has been received, we will evaluate each request and issue the LOA if we find that the level of taking will be consistent with the findings made for the total taking allowable under the ITR. Requests for LOAs may be submitted on an annual basis for additional years of activities within the ITR period. We must receive an after-action report on the monitoring and mitigation activities within 90 days after the LOA expires. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27(f).

Description of Plans of Cooperation (POCs)

A POC is a documented plan describing measures to mitigate potential conflicts between specified activities and Alaska Native subsistence hunting. The circumstances under which a POC must be developed and submitted with a request for an LOA are described below.

To help ensure that specified activities do not have an unmitigable adverse impact on the availability of the species for Alaska Native subsistence hunting opportunities, all applicants requesting an LOA under this ITR must provide the FWS documentation of communication and coordination with Alaska Native communities potentially affected by the specified activity and, as appropriate, with representative subsistence hunting and co-management organizations. If Alaska Native communities or representative subsistence hunting organizations express concerns about the potential impacts of specified activities on subsistence activities, and such concerns are not resolved during this initial communication and coordination process, then a POC must be developed and submitted with the applicant's request for an LOA. In developing the POC, the USCG will further engage with Alaska Native communities and/or representative subsistence hunting organizations to provide information and respond to questions and concerns. The POC must provide adequate measures to ensure that specified activities will not have an unmitigable adverse impact on the availability of sea otters for Alaska Native subsistence uses.

Description of Specified Geographic Region and Specified Activities

The specified geographic region includes Gulf of Alaska coastal waters of three USCG facilities. The specified activities would occur in the waters and intertidal areas of the eastern shore of Resurrection Bay, Alaska, surrounding the USCG Moorings Seward, the waters and intertidal areas of Sitka Channel, Alaska, surrounding the USCG Moorings Sitka, and the waters and intertidal areas of Womens Bay, Kodiak, Alaska, which surround the USCG Base Kodiak located on the Nyman Peninsula (figure 1, below).

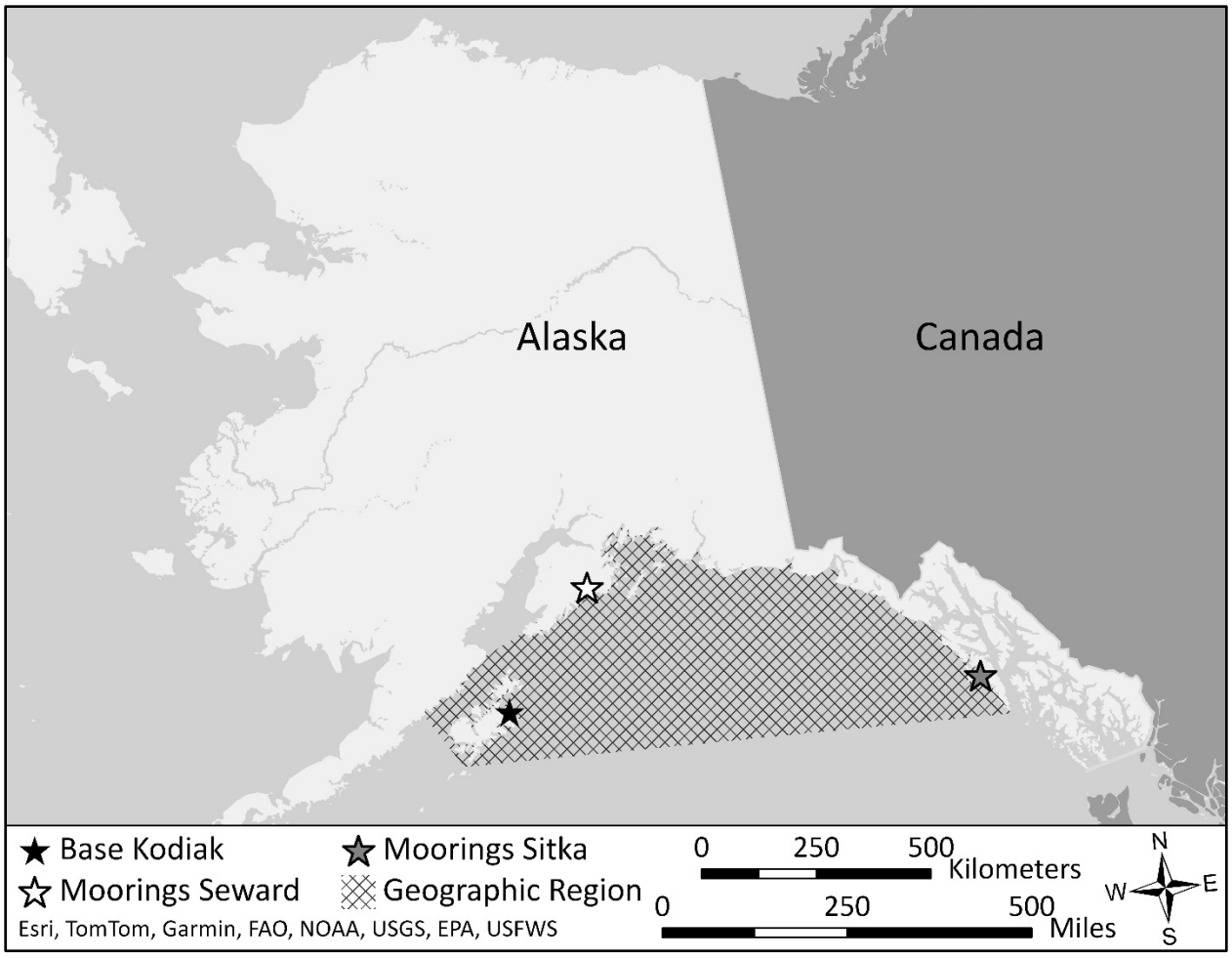


Figure 1—Specific geographic region

Three pile driving and marine construction projects would occur within the specified geographic region: Moorings Seward, Moorings Sitka, and Base Kodiak. Brief summaries of each project are provided below, and additional project details for each project may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Moorings Seward Activities

The specified activity (hereafter project) in Seward will include installation and removal of piles for the construction of shoreside facilities and associated infrastructure at the USCG Moorings Seward in the Seward Marine Industrial Center (SMIC) to homeport 1 fast response cutter (FRC). The project entails construction of a new floating dock parallel to the existing SMIC dock and reconfiguration of the SMIC floating dock to allow for construction of the FRC

moorings. For the reconfiguration of the SMIC floating dock, project activities include the removal of up to 10 existing steel guide piles that are no greater than 40.6 centimeters (cm; 16 inches [in]) in diameter and the installation of up to 10 new concrete or steel pipe guide piles that are 76.2 cm (30 in) in diameter. Construction of the new dock includes installation of up to 20 concrete or steel pipe guide piles that are no greater than 76.2 cm (30 in) in diameter. After the dock is installed, ancillary infrastructure (i.e., electricity, water, sewage) to service the docked FRC will be installed. Pile-driving activities will occur over 22 non-consecutive days for approximately 105 hours. Pile removal will be done with vibratory extraction or cutting at the mud line with a pile clipper or diamond saw. Pile installation will be done with a combination of rock socket down-the-hole (DTH) drilling, impact proofing, and vibratory settling. In-water project activities are summarized in table 1, below.

Table 1— USCG Moorings Seward: Project Activities, Piles Installed or Removed, and Activity Days

Project component	Pile size and material	Activity	Total number of piles	Maximum number of piles per day	Maximum number of activity days
FRC moorings	<40.6-cm (<16-in) steel	Removal–vibratory	10	5	2
		Removal–pile clipper		5	
		Removal–diamond wire saw		5	
	76.2-cm (30-in) concrete or steel	Installation–rock socket DTH	10	2	20
		Installation–vibratory settling		2	
		Installation–impact proofing		2	
New dock	76.2-cm (30-in) concrete or steel	Installation–rock socket DTH	20	2	
		Installation–vibratory settling		2	
		Installation–impact proofing		2	

Moorings Sitka Activities

The following description has been updated since the proposed rule with new information on project activities provided by the applicant. The USCG plans to remove a mooring dolphin supported by four steel piles, each of which is 61.0 cm (24 in) in diameter, and a float supported by six timber piles, each of which is 35.6 cm (14 in) in diameter. A total of 12 steel piles, each of which is 61.0 cm (24 in) in diameter, will be temporarily installed and removed to support installation of the new pier. The USCG plans to install a total of 107 steel piles, each of which will be 61.0 cm (24 in) in diameter, and 60 steel piles, each of which will be 40.6 cm (16 in) in diameter, to support the pier, floating dock, and mooring dolphins. Pile-driving activities will occur over 113 non-consecutive days. Pile installation will be done with a combination of impact

pile driving, vibratory pile driving, and DTH drilling. Temporary and existing piles will be removed by the dead-pull method (a direct lift of the pile using a crane with no vibration), an underwater chainsaw, or vibratory extraction. In-water activities are summarized in table 2, below.

Table 2—USCG Moorings Sitka: Project Activities, Piles Installed or Removed, and Activity Days

Project component	Pile size and material	Activity	Total number of piles	Maximum number of piles per day	Maximum number of activity days
Demolition	61.0-cm (24-in) steel	Removal–vibratory	4	4	1
	35.6-cm (14-in) timber	Removal–vibratory	6	5	2
Construction	61.0-cm (24-in) steel	Temporary installation–vibratory	12	4	3
		Temporary removal–vibratory	12	4	3
	61.0-cm (24-in) steel	Installation–vibratory	95	6	32
		Installation–impact	95	8	24
		Installation–DTH	25	4	13
	61.0-cm (24-in) steel	Installation–vibratory	4	3	4
		Installation–impact	4	3	4
		Installation–DTH	4	3	4
	61.0-cm (24-in) steel	Installation–vibratory	8	4	4
		Installation–impact	8	6	3
		Installation–DTH	8	4	4
	40.6-cm (16-in) steel	Installation–vibratory	60	8	12

Base Kodiak Activities

The USCG will implement in-water and waterfront improvements at the USCG Base Kodiak to support the commission, temporary and permanent homeporting, and berthing of FRCs and offshore patrol cutters. In-water improvements will consist of replacing and extending existing wharfs, installing floating docks and camel logs, installing a solid-fill approach bulkhead, and refurbishing small craft floats. In-water activities will include impact pile driving of steel piles and concrete fender piles, vibratory installation and extraction of timber piles, steel piles, steel/concrete piles, concrete piles, and vibroflot columns, and DTH drilling of steel piles. These activities are anticipated to occur over 339 non-consecutive days from 2 to 5 years. A total of 501 piles of various sizes and types will be removed throughout the project. A total of 918 piles of various sizes and types will be installed throughout the project. In-water activities are summarized in table 3, below.

Table 3—USCG Base Kodiak: Project Activities, Piles Installed or Removed, and Activity Days

Project component	Project year	Pile size and material	Activity	Total number of piles per year	Maximum number of piles per day	Maximum number of activity days per year

Demolition	1	35.6-cm (14-in) timber	Removal–vibratory	158	20	10
		61.0-cm (24-in) timber		24	20	2
		30.5-cm (12-in) steel		147	20	9
		35.6-cm (14-in) steel		30	20	2
Construction		61.0-cm (24-in) steel	Installation–vibratory	22	6	5
			Installation–impact	22	6	5
			Installation–DTH	11	2	7
		76.2-cm (30-in) vibroflot columns	Installation–vibratory	488	10	59
		91.4-cm (36-in) steel	Temporary installation–vibratory	94	6	19
			Temporary removal–vibratory	94	6	19
		106.7-cm (42-in) steel	Installation–vibratory	160	6	32
			Installation–impact	160	6	32
		61.0-cm (24-in) steel/concrete	Removal–vibratory	4	20	1
		61.0-cm (24-in) precast concrete reaction	Installation–vibratory	35	6	7
		61.0-cm (24-in) precast concrete fender	Installation–impact	35	6	7
		63.5–106.7-cm (25–42-in) steel	Installation–DTH	80	2	48
	2	61.0-cm (24-in) steel	Installation–vibratory	20	6	4
			Installation–impact	20	6	4
			Installation–DTH	10	2	6
		76.2-cm (30-in) steel	Installation–vibratory	23	6	5
			Installation–impact	23	6	5
		91.4-cm (36-in) steel	Permanent installation–vibratory	8	4	3
			Permanent installation–impact	8	4	3
			Temporary installation–vibratory	44	6	9
			Temporary removal–vibratory	44	6	9
		106.7-cm (42-in) steel	Installation–vibratory	24	6	5
			Installation–impact	24	6	5
		63.5–106.7-cm (25–42-in) steel	Installation–DTH	28	2	17

Estimated Take

Calculating Take

Sea Otter Density

We reviewed our take estimates for the Kodiak and Seward project areas and determined they remain valid; therefore, we use the same take estimates for those project areas in our

analysis for this final rule. In light of the new information on project activities provided by the applicant and new sea otter observation data, we have revised our take estimates for the Sitka project area as described here. In the proposed rule, we estimated an average of 0.85 sea otters/square kilometer (km^2) in the Sitka project area based on sea otter abundance estimates published for the Southeast Alaska sea otter stock (Tinker et al. 2019; Eisaguirre et al. 2021). Since the publication of the proposed rule, we have received sea otter observation data that indicates sea otter density may be higher in the Sitka project area. Information from three marine mammal observation datasets near the Sitka project area were submitted for our review by the applicant. Only one of these three marine mammal observation datasets reported sea otters were observed in the Sitka project area. This marine mammal observation dataset was an unpublished dataset that reported a total of 37 sea otters observed during a float replacement project across 8 days, with a range from 1 to 8 sea otters observed each day. The average number of sea otters observed each day was five sea otters (SolsticeAK unpublished data). The abundance estimate for the Southeast Alaska sea otter stock has generally increased and sea otters have moved into previously unoccupied areas within the Southeast Alaska sea otter stock region over recent years (Eisaguirre et al. 2023; Schuette et al. 2023; 88 FR 53510, August 8, 2023). It is possible that more sea otters than we initially anticipated in the proposed rule may move into the Sitka project area during the project period based on this current population trend. We used the highest estimate of sea otters recorded in the marine mammal observation datasets provided by the applicant to inform our sea otter density estimate in order to conservatively estimate the number of sea otters that may be present in the Sitka project area. Based on information from the marine mammal observation datasets, we estimate that up to 5 sea otters/km^2 will be in the Sitka project area.

Sound Levels for the Specified Activities

The new information on project activities at Sitka changed the sound levels we anticipate for this project due to the changes in pile types, pile numbers, and number of activity days. Sound levels for the new project activities in Sitka are listed in table 4, below.

Table 4—USCG Moorings Sitka: Project Activities; Sound Levels, Source, and Timing

Project component	Pile size and material	Activity	Sound levels	Source	Timing per pile (nonimpulsive sound sources) or strikes per pile (impulsive sound sources)
Demolition	61.0-cm (24-in) steel	Removal–vibratory	163 dB RMS	NMFS 2023	30 minutes
	35.6-cm (14-in) timber	Removal–vibratory	162 dB RMS	CalTrans 2020	30 minutes
Construction	61.0-cm (24-in) steel	Temporary installation–vibratory	163 dB RMS	NMFS 2023	15 minutes
		Temporary removal–vibratory	163 dB RMS	NMFS 2023	15 minutes
	61.0-cm (24-in) steel	Installation–vibratory	163 dB RMS	NMFS 2023	75 minutes
		Installation–impact	190 dB RMS; 177 dB SELss; 203 dB peak	CalTrans 2015	500 strikes
		Installation–DTH	167 dB RMS; 159 dB SELss; 184 dB peak	Heyvaert & Reyff 2021; NMFS 2022	120 minutes/ 108,000 strikes
	61.0-cm (24-in) steel	Installation–vibratory	163 dB RMS	NMFS 2023	75 minutes
		Installation–impact	190 dB RMS; 177 dB SELss; 203 dB peak	CalTrans 2015	500 strikes
		Installation–DTH	167 dB RMS; 159 dB SELss; 184 dB peak	Heyvaert & Reyff 2021; NMFS 2022	120 minutes/ 108,000 strikes
	61.0-cm (24-in) steel	Installation–vibratory	163 dB RMS	NMFS 2023	75 minutes
		Installation–impact	190 dB RMS; 177 dB SELss; 203 dB peak	CalTrans 2015	500 strikes
		Installation–DTH	167 dB RMS; 159 dB SELss; 184 dB peak	Heyvaert & Reyff 2021; NMFS 2022	120 minutes/ 108,000 strikes
	40.6-cm (16-in) steel	Installation–vibratory	163 dB RMS	NMFS 2023	30 minutes

Ensonified Areas

Distances to below Level A harassment and Level B harassment thresholds with the revised sound levels were calculated for each project activity to determine the ensonified area for a given project activity. The USCG requested to implement a 20-meter (m; 66-feet [ft]) shutdown zone for all project activities in Sitka to reduce harassment of sea otters by in-water noise and minimize the likelihood that sea otters are impacted by physical interactions with

construction equipment and materials. This shutdown zone will encompass some of the Level A harassment and Level B harassment zones in the Sitka project area (table 5, below).

Table 5—USCG Moorings Sitka: Distances to Below Level A Harassment and Level B Harassment Zones and Shutdown Zone*

Project component	Pile size and material	Activity	Distance to below Level A harassment threshold (m)	Distance to below Level B harassment threshold (m)	Distance to below shutdown zone (m)
Demolition	61.0-cm (24-in) steel	Removal–vibratory	0.6	15.9	20.0
	35.6-cm (14-in) timber	Removal–vibratory	0.6	13.6	20.0
Construction	61.0-cm (24-in) steel	Temporary installation–vibratory	0.4	15.9	20.0
		Temporary removal–vibratory	0.4	15.9	20.0
	61.0-cm (24-in) steel	Installation–vibratory	1.5	15.9	20.0
		Installation–impact	39.0	1,000.0	20.0
		Installation–DTH	55.9	29.3	20.0
	61.0-cm (24-in) steel	Installation–vibratory	1.0	15.9	20.0
		Installation–impact	20.3	1,000.0	20.0
		Installation–DTH	46.1	29.3	20.0
	61.0-cm (24-in) steel	Installation–vibratory	1.2	15.9	20.0
		Installation–impact	32.2	1,000.0	20.0
		Installation–DTH	55.9	29.3	20.0
	40.6-cm (16-in) steel	Installation–vibratory	1.0	15.9	20.0

** Work at the USCG's Moorings Sitka is expected to be completed within 1 year.*

We created geospatial files to represent the Sitka project area and ensonified water around the project area clipped by land boundaries. To determine the area in which sea otters may experience Level A harassment during the USCG's project activities, we subtracted the area of the 20-m (66-ft) shutdown zone from the area ensonified to >232 dB peak sound pressure level or >203 dB cumulative SEL (SEL_{CUM}) re 1µPa for impulsive underwater sound and >219 dB SEL re 1µPa for nonimpulsive underwater sound. Next, we multiplied the remaining ensonified area for Level A harassment by the estimated sea otter density in the Sitka project area (see *Sea Otter Density*) and the maximum number of project activity days to determine the number of sea otters that may experience Level A harassment (table 6, below).

Table 6—USCG Moorings Sitka: Project Activities and Level A Harassment Events Anticipated

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density	Level A area (km^2)	Level A area minus shutdown zone area (km^2)	Estimated sea otters affected by Level A sound per day (rounded)	Total estimated Level A harassment events
Demolition	61.0-cm (24-in) steel	Removal–vibratory	1	5 sea otters/km^2	<0.001	0	0	0
	35.6-cm (14-in) timber	Removal–vibratory	2		<0.001	0	0	0

Construction	61.0-cm (24-in) steel	Temporary installation –vibratory	3		<0.001	0	0	0
		Temporary removal–vibratory	3		<0.001	0	0	0
	61.0-cm (24-in) steel	Installation –vibratory	32		<0.001	0	0	0
		Installation –impact	24		0.015	0.008	2[a]	48
		Installation –DTH	13		0.023	0.017	2[a]	26
	61.0-cm (24-in) steel	Installation –vibratory	4		<0.001	0	0	0
		Installation –impact	4		0.007	<0.001	0*	0
		Installation –DTH	4		0.018	0.012	2[a]	8
	61.0-cm (24-in) steel	Installation –vibratory	4		<0.001	0	0	0
		Installation –impact	3		0.012	0.005	2[a]	6
		Installation –DTH	4		0.023	0.017	2[a]	8
	40.6-cm (16-in) steel	Installation –vibratory	12		<0.001	0	0	0

** Where the estimated total number of exposures was 0 for 3 or more decimal places (i.e., <0.000X), the total number of exposures was assumed to be 0.*

[a] Where the estimated total number of exposures expected was greater than 0.001, we rounded to 2 instead to accommodate potential mom and pup pairs of sea otters for project activities.

To estimate the number of sea otters anticipated to experience Level B harassment during the USCG's project activities, we subtracted either the area of the Level A harassment zone or the area of the 20-m (66-ft) shutdown zone (whichever was greater) from the area ensonified to >160 dB re 1µPa to determine the area in which sea otters may experience Level B harassment. Next, we multiplied the remaining ensonified area for Level B harassment by the sea otter density for the Sitka project area (see *Sea Otter Density*) and the maximum number of project activity days to determine the number of sea otters that may experience Level B harassment (table 7, below).

Table 7—USCG Moorings Sitka: Project Activities and Level B Harassment Events Anticipated

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density	Level B area (km^2)	Level B area minus Level A/ shutdown zone area (km^2)	Estimated sea otters affected by Level B sound per day (rounded)	Total estimated Level B harassment events
Demolition	61.0-cm (24-in) steel	Removal–vibratory	1	5 sea otters/km^2	0.005	0	0	0
	35.6-cm (14-in) timber	Removal–vibratory	2		0.005	0	0	0

Construction	61.0-cm (24-in) steel	Temporary installation –vibratory	3		0.005	0	0	0
		Temporary removal–vibratory	3		0.005	0	0	0
	61.0-cm (24-in) steel	Installation –vibratory	32		0.005	0	0	0
		Installation –impact	24		0.604	0.589	3	72
		Installation –DTH	13		0.011	0	0	0
	61.0-cm (24-in) steel	Installation –vibratory	4		0.005	0	0	0
		Installation –impact	4		0.604	0.597	3	12
		Installation –DTH	4		0.011	0	0	0
	61.0-cm (24-in) steel	Installation –vibratory	4		0.005	0	0	0
		Installation –impact	3		0.604	0.593	3	9
		Installation –DTH	4		0.011	0	0	0
	40.6-cm (16-in) steel	Installation –vibratory	12		0.005	0	0	0

We assumed that the different types of pile-driving activities will occur sequentially and that the total number of activity days would equal the sum of the number of days required to complete each type of pile-driving activity. While it is possible that on some days more than one type of activity will take place, which would reduce the number of days of exposure, we cannot know this information in advance. As such, the estimated number of days is the maximum possible for the planned activity. Where the number of exposures expected per day was 0 to 3 or more decimal places (i.e., <0.000X), the number of exposures per day was assumed to be 0. Where the number of exposures expected per day was greater than 0.001, we rounded to 2 exposures to accommodate potential mom and pup pairs of sea otters for project activities in Sitka.

Critical Assumptions

In order to conduct this analysis and estimate the maximum anticipated number of takes by Level A harassment and Level B harassment, we added to our critical assumptions described in the proposed rule (90 FR 26486 at 26506, June 23, 2025).

A summary of sea otter observation data during a float replacement project in the Sitka project area was provided without any description of the area in which sea otters were observed (SolsticeAK unpublished data). In order to estimate a sea otter density, we assumed that sea otters were observed over a 1 km^2 area. The number of sea otters observed each day of the project ranged from 1 to 8 sea otters, with an average of 5 sea otters observed each day (SolsticeAK unpublished data). Therefore, we estimated that up to 5 sea otters/km^2 will be in the Sitka project area.

Sum of Harassment from All Sources

The USCG will conduct pile driving and marine construction activities in Seward, Sitka, and Kodiak within the 5-year ITR period. A summary of total numbers of estimated takes by Level A harassment and Level B harassment by project location, year, and 5-year duration of the final ITR is provided in table 8, below.

Table 8—Final ITR: Sea Otters Expected to be Harassed; Level A Harassment and Level B Harassment Events

Location	Number of sea otters exposed to Level A harassment (single year)	Number of Level A harassment events (single year)	Total number of Level A harassment events (5 years)	Number of sea otters exposed to Level B harassment (single year)	Number of Level B harassment events (single year)	Total number of Level B harassment events (5 years)
Seward (Southcentral AK stock)	0	0	0	80	80	80*
Sitka (Southeast AK stock)	96	96	96*	93	93	93*
Kodiak (Southwest AK stock)	423	433	433	423	4,172	4,172

** Work at the USCG's Moorings Seward and Moorings Sitka is expected to be completed within 1 year.*

In a single year, we estimate up to 80 instances of take by Level B harassment of 80 sea otters from the Southcentral Alaska stock, up to 93 instances of take by Level B harassment of 93 sea otters from the Southeast Alaska stock, and up to 4,172 instances of take by Level B harassment of 423 sea otters from the Southwest Alaska stock due to behavioral responses to noise exposure during project activities in Seward, Sitka, and Kodiak. Although multiple instances of Level B harassment of individual sea otters are possible, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected sea otters. The potential effects of multiple Level B harassment noise exposures may include short-term

behavioral reactions, displacement of sea otters near active operations, and potential temporary shifts in hearing thresholds. We anticipate that the majority of Level B harassment events will be behavioral responses to noise exposure. Sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears will not be exposed to continuous noise, thereby reducing their likelihood to experience temporary shifts in hearing thresholds. Considering the specified activities would occur during a limited amount of time over non-consecutive days and in a localized area, we do not anticipate that the effects of multiple Level B harassment noise exposures would rise to the level of TTS, an injury, or Level A harassment.

In a single year, we estimate no instances of take by Level A harassment of sea otters from the Southcentral Alaska stock, up to 96 instances of take by Level A harassment of 96 sea otters from the Southeast Alaska stock, and up to 433 instances of take by Level A harassment of 423 sea otters from the Southwest Alaska stock due to PTS associated with noise exposure during project activities in Seward, Sitka and Kodiak. While the project activities in Seward will create sound levels above Level A harassment thresholds, the use of acoustic shutdown zones of 85 m (279 ft) for DTH drilling and 30 m (98 ft) for all other activities are expected to preclude Level A harassment events from occurring during these specified activities in Seward. The PSOs will be stationed at multiple vantage points, some elevated, to increase the distances at which sea otters can be reliably detected in Seward. For project activities in Sitka and Kodiak, using soft-start procedures, zone clearance prior to activity startup, and shutdown zones is likely to decrease both the number of sea otters exposed to noise above Level A harassment thresholds and the exposure time of any sea otters entering the Level A harassment zone. This reduces the likelihood of hearing sensitivity losses that might impact the health, reproduction, or survival of affected sea otters. Despite the implementation of mitigation measures, it is anticipated that some

sea otters will experience Level A harassment via exposure to in-water noise above threshold criteria during impact pile driving and DTH drilling activities.

Determinations and Findings

Small Numbers

For our small numbers determination, we considered whether the estimated number of sea otters to be subjected to incidental take is small relative to the population size of the species or stock. More specifically, the FWS compares the number of sea otters anticipated to be taken in each year contemplated by the ITR with the population estimate applicable to each of those years. Here, predicted numbers of sea otters to be taken were determined based on the estimated density of sea otters in the project area and ensonification areas developed using empirical evidence from similar geographic areas. We estimate that the USCG's projects may annually result in the incidental take of approximately:

- No more than 80 Southcentral Alaska stock sea otters by Level B harassment annually and over the duration of this ITR (see *Sum of Harassment from All Sources*). Annual take of 80 sea otters is 0.37 percent of the best available estimate of the current annual Southcentral Alaska stock size of 21,617 animals (Esslinger et al. 2021; 88 FR 53510, August 8, 2023) ([80÷21,617]×100≈0.37) and represents a "small number" of sea otters of that stock.
- No more than 189 Southeast Alaska stock sea otters by Level A harassment and Level B harassment annually and over the duration of this ITR (see *Sum of Harassment from All Sources*). Annual take of 189 sea otters is 0.85 percent of the best available estimate of the current annual Southeast Alaska stock size of 22,359 animals (88 FR 53510, August 8, 2023) ([189÷22,359]×100≈0.85) and represents a "small number" of sea otters of that stock.
- No more than 423 Southwest Alaska stock sea otters by Level A harassment and Level B harassment annually and over the duration of this ITR (see *Sum of Take from All Sources*). Annual take of 423 sea otters is 0.81 percent of the best available estimate of the current annual

Southwest Alaska stock size of 51,935 animals (88 FR 53510, August 8, 2023) ([423÷51,935]×100≈0.81) and represents a "small number" of sea otters of that stock.

Within the specified geographic region, the area of specified activity is expected to be small relative to the range of sea otters. Sea otters range well beyond the boundaries of the specified geographic region. As such, the specified geographic region itself represents only a subset of the potential area in which this species may occur, and we anticipate that only a small proportion of sea otters would be present within the vicinity of the specified activities.

Therefore, we find that the USCG's specified activities will take only small numbers of sea otters because: (1) Only a small proportion of sea otters will overlap with the areas where the specified activities will occur; (2) the estimated number of Southcentral Alaska stock sea otters to be taken will be limited to a total of 80 Southcentral Alaska stock sea otters annually and over the duration of the ITR; (3) the estimated number of Southeast Alaska stock sea otters to be taken will be limited to a total of 189 Southeast Alaska stock sea otters annually and over the duration of the ITR; and (4) the estimated number of Southwest Alaska stock sea otters to be taken will be limited to a total of 423 Southwest Alaska stock sea otters annually and over the duration of the ITR, which represents a small proportion of each stock of sea otters.

Negligible Impact

For our negligible impact determination, we considered the following:

(1) The documented impacts of previous activities similar to the specified activities on sea otters, taking into consideration cumulative effects, suggests that the types of activities analyzed for this ITR will have minimal effects limited to short-term, temporary behavioral changes, displacement of sea otters near active operations, and potential hearing threshold shifts. This is true not only for Level B harassment, but also Level A harassment. While Level A harassment has the potential to result in the injury of up to 96 sea otters at Sitka and up to 423 sea otters at Kodiak during the ITR period, this type of harassment is not anticipated to result in long-term impacts that are likely to result in mortality. Most sea otters will respond to

disturbance by moving away from the sound source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected sea otters are expected to resume normal behaviors soon after exposure with no lasting consequences to their survival or reproduction. Sea otters may move in and out of the project area during pile-driving activities, leading to as many as 80 individuals in Seward, 189 individuals in Sitka, and 423 individuals in Kodiak experiencing exposure to noise at levels that may cause harassment. However, it is possible that an individual may enter the ensonification area more than once during the project. At most, if the same sea otter enters the ensonification area every day that pile driving occurs, the sea otter would be exposed to pile driving and marine construction noise for up to 22 non-consecutive days in Seward, 113 non-consecutive days in Sitka, and up to 339 non-consecutive days in Kodiak.

We do not anticipate that sea otters in Seward will be exposed to noise levels equal to or greater than Level A harassment thresholds due to the applicant's implementation of acoustic shutdown zones larger than the Level A harassment zone. It is possible that sea otters in Sitka and Kodiak may be exposed to noise levels equal to or greater than Level A harassment thresholds on multiple days throughout project activities. The potential effects of multiple Level A harassment noise exposures may include a greater reduction in a sea otter's hearing sensitivity, but this reduction in hearing sensitivity does not equate to total hearing loss. The reduction in sea otter hearing sensitivity caused by PTS would align with the energy produced by pile-driving activities (e.g., low-frequency less than 2 kilohertz (kHz)), which would not impair the majority of a sea otter's hearing range. Sea otters do not rely on sound to orient themselves, locate prey, or communicate under water. Therefore, we do not anticipate PTS from multiple Level A harassment noise exposures would impact sea otters' ability to move, forage, or communicate. Sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987). However, we anticipate that a sea otter will retain the majority of its hearing range if it

experiences PTS from multiple Level A harassment noise exposures and that impacts from PTS will not have long-term consequences to a sea otter's survival and reproduction.

It is possible that sea otters will move away from Level A harassment zones to avoid experiencing PTS. The area that will experience noise levels equal to or greater than Level A harassment thresholds due to pile driving is small (approximately 0.017 km^2 for Sitka and 0.13 km^2 for Kodiak), and a sea otter that may be disturbed could escape the noise by moving to nearby quieter areas. Further, sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears will not be exposed to continuous noise, thereby reducing their likelihood to experience PTS. Some sea otters may exhibit some of the stronger responses typical of Level B harassment, such as fleeing, interruption of feeding, or flushing from a haulout. These responses could have temporary biological impacts for affected individuals but are not anticipated to result in measurable changes in survival or reproduction. The anticipated impacts on sea otters are limited and therefore unlikely to adversely affect annual rates of sea otter survival or recruitment.

(2) The applicant will implement monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on sea otters. Adaptive mitigation and management responses based on real-time monitoring of the project areas by PSOs (described in this final rule) will be used to avoid or minimize interactions with sea otters and, therefore, limit potential disturbance of these animals.

(3) The FWS does not anticipate any lethal take or long-term impacts that would remove individual sea otters from the population or prevent their successful reproduction. Incidental harassment events are anticipated to be limited to human interactions that lead to short-term behavioral disturbances, displacement of sea otters near active project operations, and potential hearing threshold shifts. These disturbances would not affect the rates of recruitment or survival

for the Southcentral Alaska, Southeast Alaska, and Southwest Alaska stocks of sea otters. This ITR does not authorize take that will likely lead to mortality or lethal take.

We also considered the conjectural or speculative impacts associated with these specified activities. The specific congressional direction described below justifies balancing the probability of such impacts with their severity.

If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the FWS will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16304-5 (October. 15, 1986)).

The potential effects of most concern here are the potential injury or PTS of sea otters in Sitka and Kodiak resulting from exposure to noise levels equal to or greater than Level A harassment thresholds. The FWS does not anticipate lethal take of sea otters as a result of the USCG's in-water activities. As a result of our analyses presented in the proposed and final rules, we estimate up to 96 takes by Level A harassment may occur annually and up to a total of 96 takes by Level A harassment may occur during project activities in Sitka. We estimate up to 433 takes by Level A harassment may occur annually and up to a total of 433 takes by Level A harassment may occur during project activities in Kodiak. While the FWS found that in-water noise will rise to a level that may cause PTS in the areas immediately adjacent to pile driving activities, these noise levels will not extend farther than 55.9 m (183.4 ft) from the sound source in Sitka and not farther than 145.1 m (476.0 ft) from the sound source in Kodiak.

The applicant will implement PSO-monitored physical interaction shutdown zones that will encompass the majority of the ensonified areas in which Level A harassment may occur in

Sitka and Kodiak, thus minimizing injurious take. Additionally, using soft-start procedures and zone clearance prior to activity startup is likely to decrease both the number of sea otters exposed to noise levels above Level A harassment thresholds and the exposure time of any sea otters entering the Level A harassment zone. These mitigation measures reduce the likelihood of hearing sensitivity losses that might impact the health, reproduction, or survival of affected sea otters. A small number of takes by Level A harassment would be authorized for impact pile driving and DTH drilling activities that have Level A harassment zone radii ranging in size from 20.3 to 55.9 m (66.6 to 183.4 ft) in Sitka and from 21.8 to 145.1 m (71.5 to 476.0 ft) in Kodiak, but mitigation measures would be implemented to minimize take by Level A harassment to the extent possible.

Despite the implementation of mitigation measures, it is anticipated that some sea otters in Sitka and Kodiak will experience Level A harassment via exposure to in-water noise above threshold criteria during impact pile driving and DTH drilling activities. If any sea otters exposed to noise levels above Level A harassment threshold criteria do experience PTS in the sensitivity of their hearing, it does not equate to total hearing loss. We do not anticipate that a reduction in hearing sensitivity would significantly affect a sea otter's health, reproduction, or survival or otherwise cause any population-level effects. Therefore, the FWS does not anticipate that the conjectural or speculative impacts associated with these specified activities warrant a finding of non-negligible impact or otherwise preclude issuance of this ITR.

We reviewed the effects of the specified pile driving and marine construction activities on sea otters, including impacts from pile clipping, use of a wire saw, vibratory pile driving, impact pile driving, and DTH drilling. Based on our review of these potential impacts, past monitoring reports, and the biology and natural history of sea otters, we conclude that the anticipated incidental take from the USCG's specified activities would not affect the rates of recruitment or survival for the Southwest, Southcentral, and Southeast Alaska stocks of sea otters, and would have a negligible impact on each of those stocks.

Least Practicable Adverse Impacts

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities; the best available scientific information; and monitoring data from similar pile driving and marine construction activities. After reviewing the original requests (submitted January 19, 2024, for Seward and Sitka and March 5, 2024, for Kodiak), the FWS discussed additional mitigation measures with the USCG to reduce the potential impacts of the specified activities. These additional mitigation measures included adding more information to the USCG's descriptions of underwater pile cutting operations, vessel activities, and in-water sound levels associated with project support operations (e.g., use of noise-producing hand tools and heavy equipment), deploying noise-dampening materials (e.g., pile caps or cushions) between the pile and hammer during pile-driving activities, and revising sea otter monitoring and shutdown zones. The applicant incorporated these additional mitigation measures in their revised requests and supporting documentation (WSP Environment and Infrastructure 2024 Request; Weston Solutions 2024 Request). We determine that the mitigation measures included within the USCG's request will ensure least practicable adverse impact on sea otters.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures is expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures will be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (e.g., cost, impact on operations).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, the applicant has proposed mitigation measures, including the following:

- Using pile caps made of high-density polyethylene or ultra-high-molecular-weight polyethylene softening materials during impact pile driving;
- Conducting activities that may produce in-water noise during lower tidal conditions as possible to reduce transmission of sound into the water column;
- Using silt curtains or other containment methods to reduce sedimentation and turbidity when conducting DTH drilling and vibroflot column installation;
- Development of marine mammal monitoring and mitigation plans;
- Visual mitigation monitoring by designated PSOs;
- Halting or delaying activity during environmental conditions that may hinder sea otter detection, such as darkness, adverse weather conditions, high sea states, and other times of limited visibility;
- Maintaining the maximum distance practicable between a vessel and raft of sea otters;
- Operating vessels in such a way as to avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m [66 ft]) whenever practicable;
- Establishment of shutdown and monitoring zones;
- Site clearance before activity startup;
- Soft-start procedures; and
- Shutdown procedures.

A number of additional potential mitigation measures were considered but determined to be not practicable. One proposed mitigation measure for project activities in Sitka was determined to be not practicable after publication of the proposed rule (90 FR 26486, June 23, 2025). All these measures are listed below:

- *Require use of bubble curtains*—At the time of publication of the proposed rule (90 FR 26486, June 23, 2025), the applicant indicated that they were unable to find a contractor with

access to bubble curtain equipment for project activities in Seward and Sitka. The applicant indicated that bubble curtains would likely increase turbidity in the Kodiak project area, which may impact water quality and marine life including sea otter prey species. The FWS determined the required use of bubble curtains was not practicable because bubble curtains are impossible to undertake for project activities in Seward and Sitka and bubble curtains would not be effective in reducing the impacts to sea otters during project activities in Kodiak.

- *Require use of other noise-dampening methods*—The FWS determined the required use of other noise-dampening methods, such as cofferdams, pile-surrounding casings, sound mitigation screens, and nets around piles, was not practicable because these methods were impossible to undertake considering the number of piles being removed or installed and the close proximity of piles to each other for project activities in each of the three locations.

- *Require use of alternate detection methods*—The FWS determined that the required use of alternate detection methods, such as infrared sensors, thermal imaging, or surveys conducted by aircraft, unmanned aircraft system, or vessel, was not practicable considering that these alternate detection methods would not be as effective in reducing impacts to sea otters and the applicant would employ PSOs to monitor the project area for sea otters.

- *Require 500-m minimum distance between vessels and sea otter rafts for Kodiak*—The FWS determined that vessels maintaining a minimum distance of 500 m (1,640 ft) from a raft of sea otters was impossible to undertake considering the width of the project area in Kodiak is approximately 488 m (1,601 ft) wide or less, but the applicant agreed to vessels maintaining the maximum distance between the vessel and rafts of sea otters as practicable. The FWS determined that requiring vessels to avoid traveling in nearshore shallow water (<20 m [<66 ft]) was impossible to undertake considering the project area in Kodiak is located on the shoreline in water less than 20 m (66 ft) deep, but the applicant agreed that vessels would avoid approaching or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m [<66 ft]) whenever practicable.

- *Require acoustic shutdown zones greater than 20 m (66 ft) for Sitka*—The applicant indicated that acoustic shutdown zones greater than 20 m (66 ft) would be difficult to implement in Sitka because of the congested layout of multiple docks and construction barges obscuring the project monitoring area. The FWS determined that acoustic shutdown zones greater than 20 m (66 ft) was not practicable because this mitigation measure would not be effectively implemented for project activities in Sitka.

Impact on Subsistence Use

The specified projects will not preclude access to harvest areas or interfere with the availability of sea otters for harvest by Alaska Native Peoples. Additionally, the USCG facilities are located in developed areas and largely within areas where firearm use is prohibited. We therefore make a finding that the USCG's anticipated harassment will not have an unmitigable adverse impact on the availability of Southcentral Alaska, Southeast Alaska, or Southwest Alaska stocks of sea otters for subsistence uses by Alaska Native Peoples during the specified timeframe. In making this finding, we considered the timing and location of the specified activities and the timing and location of subsistence harvest activities in the area of the specified project.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of specified activities on sea otters; to ensure that take is consistent with that anticipated in the small numbers, negligible impact, and subsistence use analyses; and to detect any unanticipated effects on the species or stock. Monitoring plans document when and how sea otters are observed, the number of sea otters, and their behavior during the observation. This information allows the FWS to measure encounter rates, examine trends in sea otter activity and distribution in the project areas, and estimate the number of sea otters potentially affected by the specified activities. The USCG is required to report all observations of sea otters. To the extent possible, PSOs will record group

size, age, sex, behavior, duration of observation, and closest approach to the project activity. Activities within the specified geographic region may incorporate daily watch logs as well.

Monitoring activities will be summarized and reported in a formal report each year. The USCG must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We will base each year's monitoring objective on the previous year's monitoring results. We will require an approved plan for monitoring and reporting the effects of pile driving and marine construction activities on sea otters prior to issuance of an LOA. We will require approval of the monitoring results for continued operation under the LOA.

We find that these monitoring and reporting requirements to evaluate the potential impacts of planned activities will ensure that the effects of the activities remain consistent with the rest of the findings.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared an environmental assessment in accordance with the NEPA (42 U.S.C. 4321 et seq.). We have concluded that issuing a final ITR would not significantly affect the quality of the human environment, and, thus, preparation of an environmental impact statement for this incidental take regulation is not required by section 102(2) of NEPA or the Department's NEPA handbook. A copy of the EA and the FWS's FONSI can be obtained at https://www.regulations.gov under Docket No. FWS–R7–ES–2024–0195, or these documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act (ESA)

Under the ESA (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. The planned activities occur within the range of Southwest Alaska, Southcentral Alaska, and Southeast Alaska stocks of northern sea otters. The first of these, the Southwest Alaska stock, is

listed as threatened under the ESA, whereas the Southcentral Alaska and Southeast Alaska stocks are not listed under the ESA. Prior to issuance of this ITR, the FWS conducted intra-service consultation under section 7 of the ESA on our issuance of an ITR. These evaluations and findings may be requested from the FWS.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

(1) *The Native American Policy of the Service* (January 20, 2016);

(2) *The Service's Alaska Native Relations Policy* (January 10, 2025);

(3) *Executive Order (E.O.) 13175* (January 9, 2000);

(4) *Department of the Interior Secretary's Orders 3206* (June 5, 1997), *3225* (January 19, 2001), *3342* (October 21, 2016), and *3403* (November 15, 2021), including *Director's Order 227* (September 8, 2022);

(5) the *Alaska Government-to-Government Policy* (a departmental memorandum issued January 18, 2001); and

(6) the Department of the Interior's policies on consultation with Alaska Native Tribes and organizations in Part 512 of the Departmental Manual, Chapters 4 through 7.

We have evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and organizations. The FWS has determined that, due to this project's locations and activities, the Tribal organizations and communities near Kodiak, Seward, and Sitka, as well as relevant Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. 1601 et seq.) corporations, will not be impacted by this project. Regardless, the FWS has contacted Tribal

organizations in neighboring communities, as well as relevant ANCSA corporations, to inform them of the availability of this authorization and offer them the opportunity to consult.

Regulatory Planning and Review—E.O. 12866 and 13563

E.O. 12866, as reaffirmed by E.O. 13563, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this rulemaking action is not significant.

The OIRA bases its determination of significance upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) whether the rule will create inconsistencies with other Federal agencies' actions; (c) whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; (d) whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: the development of requests for LOAs; monitoring, recordkeeping, and reporting activities conducted during pile driving and marine construction; development of activity- and species-specific marine mammal monitoring and mitigation plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Realistically, costs of compliance with this rule are minimal in comparison to those related to actual pile driving and marine construction. The actual costs to develop the petition for promulgation of regulations and LOA requests do not exceed $100,000 per year, short of the “major rule” threshold that would require preparation of a regulatory impact analysis.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the

ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The USCG and their contractors conducting pile driving and marine construction in Kodiak, Sitka, and Seward, are the only entities subject to these ITRs. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

Takings Implications

This rule does not have takings implications under E.O. 12630 because it authorizes the nonlethal, incidental, but not intentional, take of sea otters by pile driving and marine construction activities and, thereby, exempts the USCG from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132. The MMPA gives the FWS the authority and responsibility to protect sea otters.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), this rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. The FWS has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform

The Departmental Solicitor's Office has determined that this rule will not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This rule includes new information collections requiring approval by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The FWS will ask OMB to review and approve the new information collection requirements contained in this rulemaking related to incidental take of marine mammals in proposed 50 CFR subpart I.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with a second opportunity to comment on the proposed information collections contained in this rule. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

This is a nonform collection. Respondents must comply with the regulations at 50 CFR part 18, which outline the procedures and requirements for submitting a request. Specific regulations governing authorized incidental take of marine mammal activities are contained in 50 CFR part 18, subpart I (nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters). These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs. We use the information to verify the findings required to issue incidental take regulations, to decide if we should issue an LOA, (if an LOA is issued) what conditions should be included in the LOA, and to monitor compliance with the

regulations and LOA(s). In addition, we analyze the information to determine impacts to polar bears, Pacific walruses, northern sea otters, and the availability of those marine mammals for subsistence purposes of Alaska Natives.

In conjunction with this rulemaking, we will request OMB approval of the following:

(1) ***Incidental Take of Marine Mammals–Application for Regulations***—Regulations at 50 CFR part 18 require the applicant to provide information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity. Applicants can find specific requirements in 50 CFR part 18, subpart I. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether to issue specific regulations and, subsequently, LOAs. The required information includes:

1. A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals.

2. The dates and duration of such activity and the specific geographical region where it will occur.

3. Based on the best available scientific information, each applicant must also provide:

a. An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions;

b. The type of taking (e.g., disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

c. A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

d. The anticipated impact of the activity upon the species or stocks; and

e. The anticipated impact of the activity on the availability of the species or stocks for subsistence uses.

4. The anticipated impact of the activity upon the habitat of the marine mammal

populations and the likelihood of restoration of the affected habitat.

5. The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.)

6. Suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.

7. Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects.

8. Applicants must develop and implement a site-specific (or umbrella plan addressing site-specific considerations), FWS-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on marine mammals and the subsistence use of these species.

9. Applicants must also provide trained, qualified, and FWS-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan. Resumes for candidate PSOs will be made available for the FWS to review.

This information is necessary for the FWS to anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for Alaska Native subsistence uses. Under requirements of the MMPA, we cannot authorize a take unless the total of all takes will have a negligible impact on the species or stocks and, where appropriate, will not have an

unmitigable adverse impact on the availability of the species or stocks for subsistence uses. These requirements ensure that applicants are aware of related monitoring and research efforts they can apply to their situation, and that the monitoring and reporting that we impose are the least burdensome to the applicant.

(2) ***Requests for Letters of Authorization (LOA)***—LOAs, which may be issued only to U.S. citizens, are required to conduct activities pursuant to any specific regulations established. Once specific regulations are effective, the FWS will, to the maximum extent possible, process subsequent applications for LOAs within 30 days after receipt of the application by the FWS. All LOAs will specify the period of validity and any additional terms and conditions appropriate for the specific request. Issuance of LOAs will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

The request for an LOA must comply with the requirements set forth in proposed § 18.103 and must include the following information:

1. An operational plan that describes in detail the activity (e.g., type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations affected by the activity;

2. A digital geospatial file of the project footprint;

3. A site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters; and

4. Plan of Cooperation (POC), if required, to mitigate potential conflicts between the activity and subsistence hunting.

(3) ***Withdrawal of LOA***—Once issued, the LOA may be withdrawn or suspended if the project activity is modified in a way that undermines the results of the evaluation conducted per proposed § 18.104(a), if the conditions of the regulations in the proposed subpart are not being substantially met, or if the taking allowed is or may be having more than a negligible impact on

the affected stock of sea otters or an unmitigable adverse impact on the availability of sea otters for subsistence uses.

(4) ***Mitigation–3rd Party Notifications (Community Consultation)***—All applicants for an LOA must contact affected Alaska Native subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the FWS documentation of communications as described in § 18.103.

Documentation must include a summary of any concerns identified by community members and hunter organizations and the applicant's responses to identified concerns. A POC may not be required for an LOA request if no concerns are raised during community consultation regarding impacts to subsistence harvest or Alaska Native communities and subsistence user organizations.

(5) ***Mitigation–3rd Party Notifications (Vessel Operations)***—Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include measures identified in § 18.107, Mitigation.

(6) ***Mitigation–Plan of Cooperation***—When appropriate, a holder of an LOA will be required to develop and implement an FWS-approved POC.

1. The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of marine mammals and to ensure continued availability of the species for subsistence use.

2. The FWS will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The FWS will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of marine mammals for subsistence use.

(7) ***Mitigation–Designation and Training of Protected Species Observers (PSOs)***—The applicant will designate trained and qualified PSOs to monitor for the presence of sea otters, initiate mitigation measures, and monitor, record, and report the effects of the activities on sea otters. The applicant is responsible for providing training to PSOs to carry out mitigation and monitoring.

(8) ***Mitigation and Monitoring Plan***—Applicants must have an approved mitigation and monitoring plan on file with the FWS's Marine Mammals Management Program (MMM) and onsite that includes the following information:

1. The type of activity and where and when the activity will occur (i.e., a summary of the plan of operation);

2. Personnel training policies, procedures, and materials;

3. Site-specific sea otter interaction risk evaluation and mitigation measures;

4. Sea otter avoidance and encounter procedures; and

5. Sea otter observation and reporting procedures.

(9) ***Onsite Monitoring and Observation Reports***—The regulations also require that each holder of an LOA submit a monitoring report indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specific activity. Since the inception of incidental take authorizations for polar bears (*Ursus maritimus*), Pacific walruses (walruses; *Odobenus rosmarus divergens*), and northern sea otters (otters; *Enhydra lutris kenyoni*), we have required monitoring and reporting during industrial activities. The purpose of monitoring and reporting requirements is to assess the effects of industrial activities on sea otters to ensure that take is minimal to their populations, and to detect any unanticipated effects of take. The monitoring focus has been site-specific, area-specific, or population-specific. Site-specific monitoring measures animal–human encounter rates, outcomes of encounters, and trends of animal activity in the industrial areas, such as sea otter numbers, behavior, and seasonal use. Area-specific monitoring includes analyzing animal spatial and temporal use trends, sex/age

composition, and risk assessment to unpredictable events, such as oil spills. Population-specific monitoring includes investigating species life-history parameters, such as population size, recruitment, survival, physical condition, status, and mortality.

(A) ***In-Season Monitoring (Observation Reports)***—Duties of PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures. Information in the observation report must include, but is not limited to:

1. PSOs will monitor a pre-clearance zone for 30 minutes prior to the commencement of in-water noise-generating activities and following periods of inactivity of more than 30 minutes to ensure all sea otters are not within the shutdown zone prior to initiating or resuming in-water noise-generating activities.

2. Observers will collect data using the following procedures:

i. All data will be recorded onto a field form or database.

ii. Global positioning system data, sea state, tidal state, wind force, visibility, and weather condition will be recorded at the beginning and end of a monitoring period, at least every hour in between, at the change of an observer, and upon observation of sea otters.

iii. Observation records of sea otters will include date; time; the observers' locations; sea otter's heading (if moving); weather condition; visibility; number of sea otters; group composition (adults/juveniles); and the location of the sea otters (or distance and direction from the observer).

iv. Observation records will also include initial behaviors of the sea otters, descriptions of project activities and in-water noise levels being generated, the position of sea otters relative to applicable monitoring and mitigation zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation.

v. For all sea otters in or near a mitigation zone, observers will record the distance from the sound source to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures.

vi. The PSOs will note any instances of sea otters lingering close to or traveling with vessels for prolonged periods of time.

vii. Monitoring of the shutdown zone must continue for 30 minutes following completion of in-water noise-generating activities.

(B) ***In-Season Monitoring (Activity Progress Reports)***—Holders of an LOA must:

1. Notify the FWS at least 48 hours prior to the commencement of activities.

2. Provide the FWS monthly progress reports for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information:

i. dates, times, weather, and sea conditions (including the Beaufort Scale sea state and wind force conditions) when sea otters were observed;

ii. the number, location, distance from the sound source, and behavior of the sea otters; and

iii. the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(10) ***Final Monitoring Report***—A final report will be submitted to the FWS's MMM within 90 days after the expiration of each LOA. The report will include:

1. A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the FWS, the daily monitoring logs).

2. A description of all project activities, any additional work yet to be done, factors influencing visibility and detectability of marine mammals (e.g., sea state, fog, glare, and number

of observers), and factors correlated with the presence and distribution of sea otters (e.g., weather, sea state, and project activities).

3. An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to Level A harassment and Level B harassment (based on visual observation).

4. A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.

5. A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts to sea otters. Sea otter observation records will be provided to the FWS in the form of electronic database or spreadsheet files.

6. All reports must be submitted by email to fw7_mmm_reports@fws.gov.

7. Injured, dead, or distressed sea otters that are not associated with project activities (e.g., animals known to be from outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the FWS within 24 hours of the discovery to either the FWS's MMM (1–800–362–5148, business hours); or the Alaska SeaLife Center in Seward (1–888–774–7325, 24 hours a day); or both. Photographs, video, location information, or any other available documentation must be provided to the FWS.

8. Operators must notify the FWS upon project completion or end of the work season.

(11) ***Notification of LOA Incident Report***—

1. Except as otherwise provided in the regulations in the subpart, prohibited taking includes the provisions of § 18.11 as well as: intentional take, lethal incidental take of sea otters, and any take that fails to comply with the regulations in this subpart or with the terms and conditions of an LOA.

2. If specified activities cause unauthorized take, the holder of an LOA must:

i. Cease activities immediately (or reduce activities to the minimum level necessary to maintain safety);

ii. Report the details of the incident within 24 hours to the FWS's MMM at 1–800–362–5148 (business hours) or via email at FW7_MMM_Reports@fws.gov. If the unauthorized taking results in a sea otter being injured or killed, call the FWS MMM during business hours or the Alaska SeaLife Center in Seward (1–888–774–7325, 24 hours a day);

iii. Provide photographs, video, location information, and any other available documentation related to the unauthorized take of the sea otter(s) to the FWS; and

iv. Suspend further activities until the FWS has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified the LOA holder that project activities may resume.

Title of Collection: Incidental Take of Marine Mammals During Specified Activities (50 CFR 18.27 and 50 CFR 18, Subpart I).

OMB Control Number: 1018–0205.

Form Numbers: None.

Type of Review: New.

Respondents/Affected Public: Federal Government–U.S. Coast Guard.

Total Estimated Number of Annual Respondents: 32.

Total Estimated Number of Annual Responses: 59.

Estimated Completion Time per Response: Completion times vary between 15 minutes and 130 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 515.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: None.

On June 23, 2025, we published in the *Federal Register* (90 FR 26486) a proposed rule (RIN 1018–BI08) which announced our intention to request OMB approval of the information collections explained in this rule. In that proposed rule, we solicited comments for 60 days on the information collections, ending on August 22, 2025. We did not receive any comments on the proposed information collections in response to that proposed rule.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to OMB, with a copy to the FWS Information Collection Clearance Officer,

U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to Info_Coll@fws.gov. Please reference "RIN 1018–BI08/OMB Control No. 1018–0205" in the subject line of your comments.

Energy Effects

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule provides exceptions from the MMPA's taking prohibitions for entities engaged in specified pile driving and marine construction activities in the specified geographic region**.** By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on the pile driving and marine construction activities. Although the rule requires an applicant to take a number of actions, these actions have been undertaken by pile driving and marine construction activities for many years as part of similar past regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No statement of energy effects is required.

References

For a list of the references cited in this rule, see Docket No. FWS–R7–ES–2024–0195, available at https://www.regulations.gov.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons set forth in the preamble, the U.S. Fish and Wildlife Service amends part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

1. The authority citation of 50 CFR part 18 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361 et seq.

2. Amend part 18 by adding subpart I to read as follows:

Subpart I—Nonlethal Taking of Northern Sea Otters Incidental to Pile Driving and Marine Construction in Seward, Sitka, and Kodiak, Alaska

Sec.

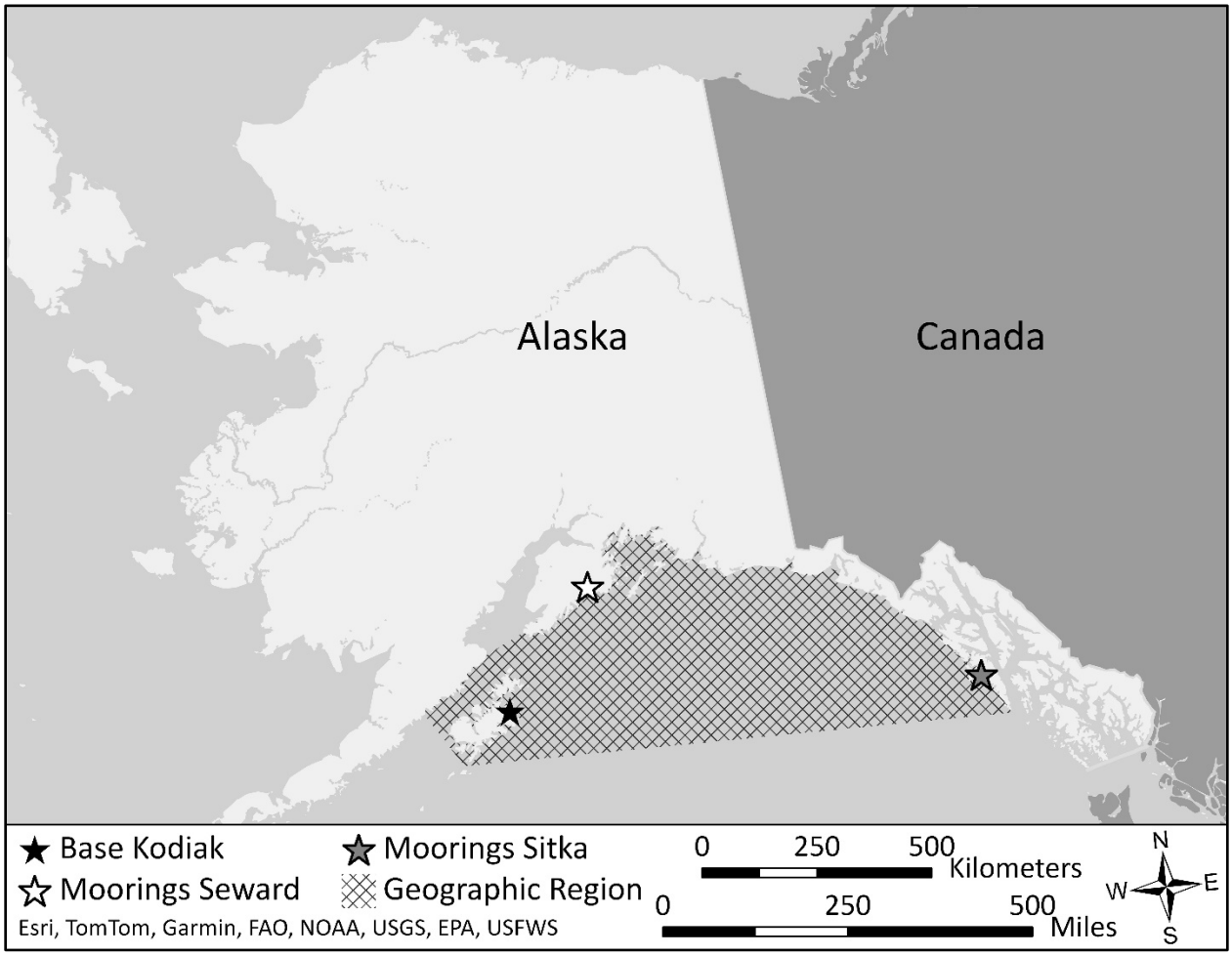
§ 18.100 Specified activities covered by this subpart.

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371 et seq.), of small numbers of northern sea otters (*Enhydra lutris kenyoni*; hereafter "sea otters") by the U.S. Coast Guard (hereafter "USCG" or "the applicant") while engaged in activities associated with or in support of pile driving and marine construction activities in Seward, Sitka, and Kodiak, Alaska. The applicant is a U.S. citizen as defined in § 18.27(c). A Letter of Authorization (LOA) from the U.S. Fish and Wildlife Service (FWS) is required to authorize incidental take that may occur during the specified activities.

§ 18.101 Specified geographic region where this subpart applies.

The specified geographic region for the incidental take regulations (ITR) in this subpart includes Gulf of Alaska coastal waters of three USCG facilities. The specified activities would occur in the waters and intertidal areas of the eastern shore of Resurrection Bay, Alaska, surrounding the new USCG Moorings Seward, the waters and intertidal areas of Sitka Channel, Alaska, surrounding the USCG Moorings Sitka, and the waters and intertidal areas of Womens Bay, Kodiak, Alaska, which surround the USCG Base Kodiak located on the Nyman Peninsula.

Figure 1 to § 18.101—Map of the ITR region including USCG's Moorings Seward, Moorings Sitka, and Base Kodiak in Alaska where the activities covered by this subpart will occur.



§ 18.102 Dates this subpart is in effect.

The regulations in this subpart are effective from [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**] through March 27, 2031.

§ 18.103 Procedure to obtain a Letter of Authorization (LOA).

(a) The applicant must submit the request for an LOA to the FWS Alaska Region, Marine Mammals Management Office (MMM), MS 341, 1011 East Tudor Road, Anchorage, Alaska 99503, at least 30 days prior to the start of the specified activity.

(b) The request for an LOA must comply with the requirements set forth in §§ 18.107 through 18.109 and must include the following information:

(1) An operational plan that describes in detail the activity (e.g., type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations affected by the activity.

(2) A digital geospatial file of the project footprint.

(3) A site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters.

(4) Documentation of the applicant's communication with potentially affected subsistence communities surrounding Seward, Sitka, and Kodiak and appropriate subsistence user organizations to discuss the location, timing, and methods of activities and identify and mitigate any potential conflicts with subsistence sea otter hunting activities.

(i) The applicant must specifically inquire of relevant communities and organizations if the activity will interfere with the availability of sea otters for the subsistence use of those groups.

(ii) Documentation must include a summary of any concerns identified by community members and hunter organizations and the applicant's responses to identified concerns.

(iii) A plan of cooperation (POC) may not be required for an LOA request if no concerns are raised during community consultation regarding impacts to subsistence harvest or Alaska Native communities and subsistence user organizations.

(5) A POC, if required, to mitigate potential conflicts between the activity and subsistence hunting.

§ 18.104 How the FWS will evaluate a request for an LOA.

(a) The FWS will evaluate each request for an LOA to determine if the specified activity is consistent with the analysis and findings we made during the rulemaking process for this subpart.

(1) We will determine whether the level of activity identified in the request exceeds the level that we analyzed in estimating the number of animals to be taken and evaluating whether

there will be a negligible impact on the species or stock and an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(2) If the level of activity is greater, we will evaluate the potential impact of this greater level of activity to determine if the potential impact is consistent with our findings. Depending on the results of the evaluation, we may grant the requested authorization, add further conditions, or deny the request for an LOA. An LOA will be limited to a 1-year period or less within the period set forth in § 18.102.

(b) The FWS will make decisions concerning withdrawal or suspension of an LOA (see § 18.27(f)(5) and (6)).

§ 18.105 Authorized take allowed under an LOA.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the applicant must apply for and obtain an LOA in accordance with §§ 18.27(f), 18.103, and 18.104.

(b) An LOA issued under this subpart allows for the nonlethal, incidental, but not intentional take by harassment, as defined under section 3 of the MMPA (16 U.S.C. 1362), of sea otters during activities specified in § 18.100 within the Seward, Sitka, and Kodiak ITR region of Alaska described in § 18.101.

(c) Each LOA will set forth:

(1) Permissible methods of incidental take;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(d) Allowable take under these regulations is limited to take by Level B harassment and Level A harassment (as those terms are defined at 16 U.S.C. 1362).

(e) Each LOA will identify terms and conditions for each activity and location.

§ 18.106 Prohibited take under an LOA.

(a) Except as otherwise provided in this subpart, prohibited taking includes the provisions of § 18.11 as well as: intentional take, lethal incidental take of sea otters, and any take that fails to comply with the regulations in this subpart or with the terms and conditions of an LOA.

(b) If specified activities cause unauthorized take, the holder of an LOA must:

(1) Cease activities immediately (or reduce activities to the minimum level necessary to maintain safety);

(2) Report the details of the incident within 24 hours to the FWS's MMM at 907–786–3800 (business hours) or via email at FW7_MMM_Reports@fws.gov. If the unauthorized taking results in a sea otter being injured or killed, call the FWS MMM during business hours or the Alaska SeaLife Center in Seward (1–888–774–7325, 24 hours a day);

(3) Provide photographs, video, location information, and any other available documentation related to the unauthorized take of the sea otter(s) to the FWS; and

(4) Suspend further activities until the FWS has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified the LOA holder that project activities may resume.

§ 18.107 Mitigation.

(a) *Mitigation measures for all LOAs*. The applicant, including all personnel operating under the applicant's authority (or "operators," including contractors, subcontractors, and representatives) must undertake the following activities to avoid and minimize take of sea otters by harassment.

(1) Implement policies and procedures to avoid interactions with and minimize to the greatest extent practicable adverse impacts on sea otters, their habitat, and the availability of these marine mammals for subsistence uses.

(2) Develop avoidance and minimization policies and procedures, in cooperation with the FWS, that include temporal or spatial activity restrictions to be used in response to the presence

of sea otters engaged in a biologically significant activity (e.g., resting, feeding, hauling out, mating, or nursing).

(3) Cooperate with the FWS's MMM Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of pile driving and marine construction activities on sea otters.

(4) Allow FWS personnel or the FWS's designated representative to board project vessels or visit project worksites for the purpose of monitoring impacts to sea otters and to subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so.

(5) Designate trained and qualified protected species observers (PSOs) to monitor for the presence of sea otters, initiate mitigation measures, and monitor, record, and report the effects of the activities on sea otters. The applicant is responsible for providing training to PSOs to carry out mitigation and monitoring.

(6) Have an approved mitigation and monitoring plan on file with the FWS MMM and onsite that includes the following information:

(i) The type of activity and where and when the activity will occur (i.e., a summary of the plan of operation);

(ii) Personnel training policies, procedures, and materials;

(iii) Site-specific sea otter interaction risk evaluation and mitigation measures;

(iv) Sea otter avoidance and encounter procedures; and

(v) Sea otter observation and reporting procedures.

(b) *Mitigation measures for in-water noise-generating work.* The applicant must carry out the following measures:

(1) Construction activities must be conducted using equipment that generates the lowest practicable levels of in-water noise within the range of frequencies audible to sea otters.

(2) If a sea otter enters or appears likely to enter the shutdown zone, in-water activities must be shut down until either the sea otter has been visually observed outside the shutdown

zone or at least 15 minutes have elapsed since the last observation time without redetection of the sea otter.

(i) During in-water activities at Seward, an acoustic shutdown zone of 85 meters (m; 280 feet [ft]) must be enforced during down-the-hole (DTH) drilling of concrete piles, and a shutdown zone of 30 m (99 ft) must be enforced during all other in-water activities.

(ii) During in-water activities at Sitka and Kodiak, regardless of predicted sound levels, a physical interaction shutdown zone of at least 20 m (66 ft) must be enforced.

(3) If the impact driver has been idled for more than 30 minutes, an initial set of three strikes from the impact driver must be delivered (at reduced energy if possible), followed by a 1-minute waiting period. This procedure will be conducted a total of three times before full-powered strikes if practicable. If unsafe working conditions during soft-starts occur (e.g., equipment failure), then the applicant may elect to discontinue soft-starts, and the applicant must notify the FWS if the soft-start procedure is discontinued.

(4) If practicable, a soft-start procedure for vibratory pile-driving activities may be implemented if the vibratory hammer has been idled for more than 30 minutes. During the soft-start procedure, initial noise generation must be limited to 15 seconds (at reduced energy if possible), followed by a 1-minute waiting period. This procedure will be conducted a total of three times before full-powered vibratory pile driving commences. If unsafe working conditions during soft-starts occur (e.g., equipment failure), then the applicant may elect to discontinue soft-starts and the applicant must notify the FWS if the soft-start procedure is discontinued.

(5) In-water activity must be conducted in daylight. If environmental conditions prevent visual detection of sea otters within the shutdown zone, in-water activities must be stopped until visibility is regained.

(6) All in-water work along the shoreline must be conducted during lower tidal conditions when the site is dewatered to the maximum extent practicable.

(7) When practicable, or when required by applicable local, State, or Federal regulations, the applicant must use containment methods (e.g., silt curtains) to isolate areas with high levels of turbidity during DTH drilling and vibroflot column installation.

(c) *Mitigation measures for vessel operations*. Vessel operators must take every precaution to avoid harassment of sea otters during vessel operations. The applicant must carry out the following measures:

(1) Vessels must maintain a minimum distance of 500 m (0.3 mile [mi]) from rafts of 10 or more sea otters unless otherwise needed for safety. If a vessel must transit within 500 m (0.3 mi) from rafts of sea otters, the vessel must travel at a reduced speed and maintain the maximum distance practicable between the vessel and raft of sea otters. Vessels must reduce speed and maintain a minimum distance of 100 m (328 ft) from all sea otters unless otherwise needed for safety.

(2) Vessels must not be operated in such a way as to separate members of a group of sea otters (two or more sea otters) from other members of the group, encircle sea otters, or impede movement of sea otters. Vessels must use established navigation channels or commonly recognized vessel traffic corridors and avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m [<66 ft]) whenever practicable.

(3) When weather conditions require, such as when visibility drops, vessels must adjust speed accordingly to reduce the likelihood of injury to sea otters.

(4) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include measures identified in paragraphs (c)(1) through (4) of this section.

(d) *Mitigation measures for the subsistence use of sea otters.* Holders of an LOA must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of sea otters for subsistence uses.

(1) *Community consultation.* Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence sea otter hunting caused by the location, timing, and methods of operations and support activities (see § 18.103 for details). If community concerns suggest that the activities may have an adverse impact on the subsistence uses of this species, the applicant must address conflict avoidance issues through a POC as described in paragraph (d)(2) of this section.

(2) *Plan of cooperation.* Based on community consultations, the holder of an LOA will be required to modify their POC if directed by the FWS.

(i) The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of sea otters and to ensure continued availability of the species for subsistence use.

(ii) The FWS will review the POC to ensure that any potential adverse effects on the availability of sea otters are minimized. The FWS will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of sea otters for subsistence use.

§ 18.108 Monitoring.

(a) Operators shall work with PSOs to apply mitigation measures and shall recognize the authority of PSOs up to and including stopping work, except where doing so poses a significant safety risk to personnel.

(b) Duties of PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

(c) A sufficient number of PSOs will be available to meet the following criteria: 100 percent monitoring of shutdown zones during all daytime periods of in-water noise-generating work; a maximum of 4 consecutive hours on watch per PSO; a maximum of 12 hours on watch per day per PSO.

(d) All PSOs will complete a training course designed to familiarize individuals with monitoring and data collection procedures. This training will be completed prior to starting work. A field crew leader with prior experience as a sea otter observer will supervise the PSO team. Initially, new or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available for the FWS to review.

(e) The PSOs will be provided with reticule binoculars (7×50 or better), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

(f) The PSOs will monitor a pre-clearance zone for 30 minutes prior to the commencement of in-water noise-generating activities and following periods of inactivity of more than 30 minutes to ensure all sea otters are not within the shutdown zone prior to initiating or resuming in-water noise-generating activities.

(g) Observers will collect data using the following procedures:

(1) All data will be recorded onto a field form or database.

(2) Global positioning system data, sea state, tidal state, wind force, visibility, and weather condition will be recorded at the beginning and end of a monitoring period, at least every hour in between, at the change of an observer, and upon observation of sea otters.

(3) Observation records of sea otters will include date; time; the observers' locations; sea otter's heading (if moving); weather condition; visibility; number of sea otters; group composition (adults/juveniles); and the location of the sea otters (or distance and direction from the observer).

(4) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and in-water noise levels being generated, the position of sea otters relative to applicable monitoring and mitigation zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation.

(5) For all sea otters in or near a mitigation zone, observers will record the distance from the sound source to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures.

(6) The PSOs will note any instances of sea otters lingering close to or traveling with vessels for prolonged periods of time.

(7) Monitoring of the shutdown zone must continue for 30 minutes following completion of in-water noise-generating activities.

§ 18.109 Reporting requirements.

(a) Operators must notify the FWS at least 48 hours prior to commencement of activities.

(b) Monthly reports will be submitted to the FWS's MMM for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information: dates, times, weather, and sea conditions (including the Beaufort Scale sea state and wind force conditions) when sea otters were observed; the number, location, distance from the sound source, and behavior of the sea otters; the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(c) A final report will be submitted to the FWS's MMM within 90 days after the expiration of each LOA. The report will include:

(1) A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the FWS, the daily monitoring logs).

(2) A description of all project activities, any additional work yet to be done, factors influencing visibility and detectability of marine mammals (e.g., sea state, fog, glare, and number

of observers), and factors correlated with the presence and distribution of sea otters (e.g., weather, sea state, and project activities).

(3) An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to Level A harassment and Level B harassment (based on visual observation).

(4) A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.

(5) A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts to sea otters. Sea otter observation records will be provided to the FWS in the form of electronic database or spreadsheet files.

(d) All reports must be submitted by email to FW7_MMM_Reports@fws.gov.

(e) Injured, dead, or distressed sea otters that are not associated with project activities (e.g., animals known to be from outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the FWS within 24 hours of the discovery to either the FWS's MMM (907–786–3800, business hours); or the Alaska SeaLife Center in Seward (1–888–774–7325, 24 hours a day); or both. Photographs, video, location information, or any other available documentation must be provided to the FWS.

(f) Operators must notify the FWS upon project completion or end of the work season.

§ 18.110 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part and assigned OMB Control Number 1018–0205. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimate or any other aspect of the information collection to the FWS Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

Kevin Lilly,
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks,
Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 2026-05976 Filed: 3/26/2026 8:45 am; Publication Date: 3/27/2026]