



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XF759]

### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Francis Scott Key Bridge Rebuild Project in Baltimore, Maryland**

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

**ACTION:** Notice; issuance of incidental harassment authorizations.

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two consecutive incidental harassment authorizations (IHAs) to the Federal Highway Administration (FHWA) for authorization to take marine mammals incidental to the Francis Scott Key Bridge Rebuild Project in Baltimore, Maryland.

**DATES:** These authorizations are effective from June 1, 2026, through May 31, 2027, and June 1, 2027 through May 31, 2028.

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

*<https://www.fisheries.noaa.gov/action/incidental-take-authorization-taking-marine-mammals-incidental-francis-scott-key-bridge>*. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427-8401.

#### **SUPPLEMENTARY INFORMATION:**

#### **MMPA Background and Determinations**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Among the exceptions is section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) which directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS will issue an IHA if it finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least [practicable] adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation”). NMFS must also prescribe requirements pertaining to the monitoring and reporting of such takings. The definitions of key terms, such as “take,” “harassment,” and “negligible impact,” can be found in the MMPA and the NMFS' implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

On April 22, 2026, a notice of NMFS' proposal to issue two consecutive IHAs to FHWA for take of marine mammals incidental to the Francis Scott Key Bridge Rebuild Project in Baltimore, Maryland was published in the **Federal Register** (91 FR 21425). In that notice, NMFS indicated the estimated numbers, type, and methods of incidental take proposed for each species or stock, as well as the mitigation, monitoring, and reporting measures that would be required should the IHAs be issued. The **Federal Register** notice also included analysis to support NMFS' preliminary conclusions and determinations that the IHAs, if issued, would satisfy the requirements of section 101(a)(5)(D) of the MMPA

for issuance of the IHAs. The **Federal Register** notice included web links to both draft IHAs for review, as well as other supporting documents.

No substantive comments were received during the public comment period. With the exception of the minor changes described below, there are no changes to the specified activity, the species taken, the proposed numbers, type, or methods of take, or the mitigation, monitoring, or reporting measures in the proposed IHAs notice. No new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHAs notice has become available since that notice was published, and therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHAs are considered final.

### **Changes from the Proposed IHAs to the Final IHAs**

Changes from the proposed IHAs to the final issued IHAs include clarifications related to hydroacoustic monitoring and results, and correction of a mathematical error. With respect to hydroacoustic monitoring, the notice of proposed IHAs indicated that measurements would be taken during driving of the first five piles of each size during both impact and vibratory driving (91 FR 21425 at 21444, April 22, 2026). FHWA has clarified that although efforts would be made to measure driving of the first five piles in isolation, it is possible that these measurements could include times when piles are also being driven elsewhere along the project corridor and thus have artificially increased background noise levels. With NMFS' concurrence, the FHWA will adjust the sizes of shutdown and clearance zones in year 2 as needed based on the results of hydroacoustic monitoring in year 1.

NMFS has also identified and corrected a mathematical error in Table 7 of the proposed IHA (91 FR 21425 at 21439, April 22, 2026). The predicted source value for the larger impact hammer was shown as 199 decibels (dB) referenced to 1 micropascal (re 1  $\mu$ Pa) root-mean-square (RMS), which had been calculated based on the preliminary

measurements of the smaller impact hammer. The final measured source value for the smaller hammer is correct in the table, and the predicted source value for the larger hammer should be 200.4 dB re 1 $\mu$ Pa RMS. This change does not affect the amount of authorized take because it results in only a very small increase in the size of the ensonified area on the 20 percent of construction days that the larger impact hammer is needed. This change does not affect the required shutdown zones, because the shutdown zones were based on measured distances during the test pile program rather than modeled source values and propagation ranges.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated

critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

### **Authorization**

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued two consecutive IHAs to FHWA for authorization to take marine mammals incidental to the Francis Scott Key Bridge Rebuild Project in Baltimore, Maryland.

Dated: May 29, 2026.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

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