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## V. Authority

We issue this notice under the authority of the implementing regulations and under the authority of the Wild Bird Conservation Act of 1992 (16 U.S.C. 4901–4916). This notice is provided pursuant to section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

### Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS–R7–ES–2023–0212; FXES111607MRG01–245–FF07CAMM00]

### Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Southwest Alaska Stock of Northern Sea Otters in Kodiak, Alaska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application; proposed incidental harassment authorization; draft environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act of 1972, as amended, from Trident Seafoods Corporation, propose to authorize nonlethal incidental take by harassment of small numbers of the Southwest Alaska stock of northern sea otters (*Enhydra lutris kenyoni*) for 1 year from the date of issuance of the incidental harassment authorization. The applicant requested this authorization for take by harassment that may result from activities associated with pile driving and marine construction activities in Near Island Channel in Kodiak, Alaska. We estimate that this project may result in the nonlethal incidental take by harassment of up to 460 northern sea otters from the Southwest Alaska stock. This proposed authorization, if finalized, will be for up to 3,160 takes of 460 northern sea otters by Level B harassment. No take by Level A harassment or lethal take are requested,

or expected, and no such take will be authorized.

**DATES:** Comments on this proposed incidental harassment authorization and the accompanying draft environmental assessment must be received by February 26, 2024.

### ADDRESSES:

**Accessing documents:** You may view this proposed incidental harassment authorization, the application package, supporting information, draft environmental assessment, and the list of references cited herein at <https://www.regulations.gov> under Docket No. FWS–R7–ES–2023–0212. Alternatively, you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Submitting comments:** You may submit comments on the proposed authorization by one of the following methods:

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS–R7–ES–2023–212, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

- **Internet:** <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2023–212.

We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

**FOR FURTHER INFORMATION CONTACT:** Charles Hamilton, by U.S. mail at the U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503; by email at [R7mmregulatory@fws.gov](mailto:R7mmregulatory@fws.gov); or by telephone at 1–800–362–5148. 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:

#### Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of 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) in a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (“Service” or “we”). According to the MMPA, the Service shall allow this incidental taking if we make findings that the total of such taking for the 1-year period:

- (1) is of small numbers of marine mammals of a species or stock;
- (2) will have a negligible impact on such species or stocks; and

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

If the requisite findings are made, we issue an authorization that sets 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 by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term “take” means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal. “Harassment” means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as “Level A harassment”), or (ii) 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”).

The terms “negligible impact” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows: “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. “Unmitigable adverse impact” means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet

subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of marine mammals to be taken and evaluate if that number is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. For this IHA, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of project activities, but they are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, we shall issue an IHA, which may set forth the following, where applicable: (i)

permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal-dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting take by harassment.

#### Summary of Request

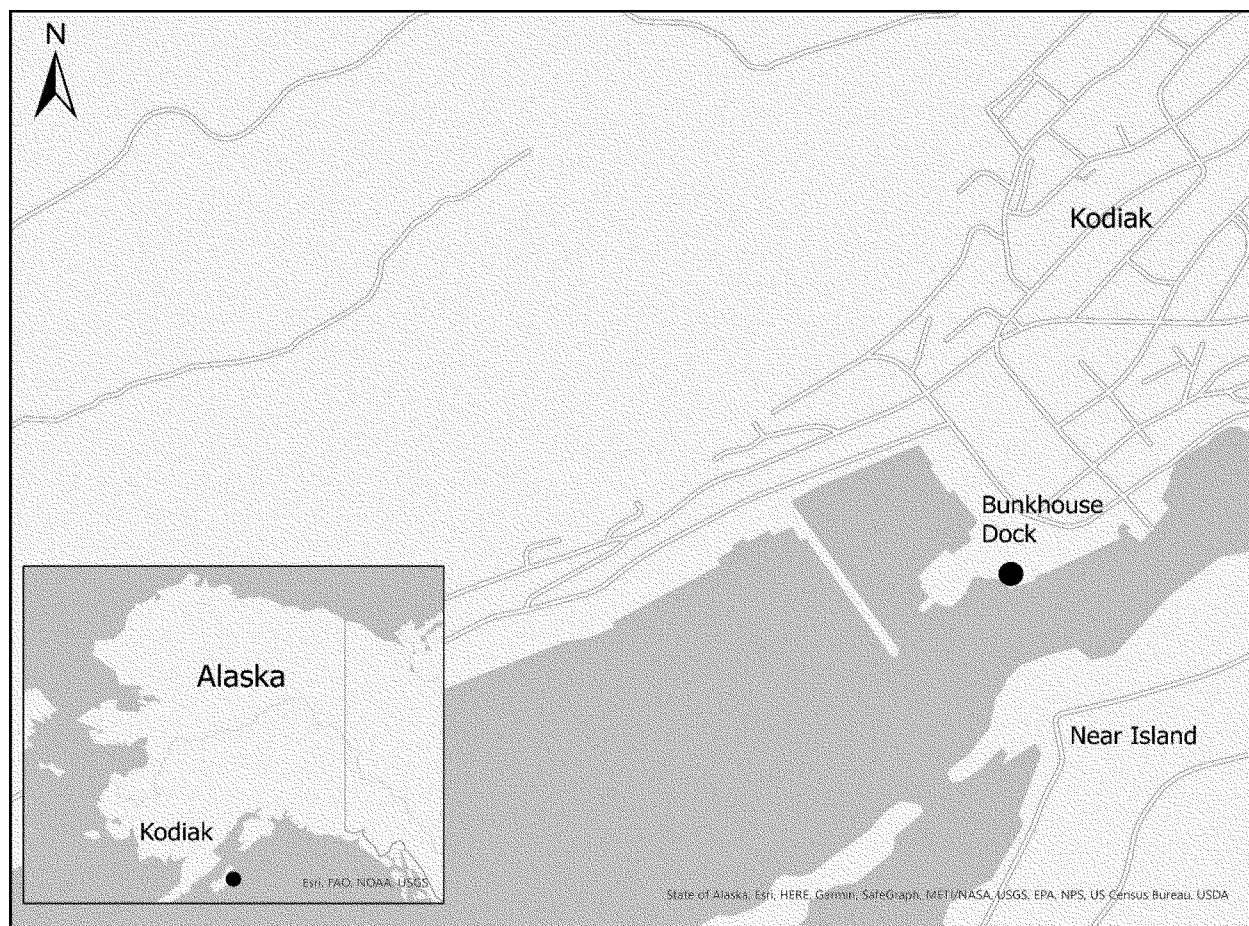
On May 25, 2023, Trident Seafoods Corporation (hereafter “Trident” or “the applicant”) submitted a request to the Service for authorization to take by Level B harassment a small number of northern sea otters (*Enhydra lutris kenyoni*) (hereafter “sea otters” or “otters” unless another species is specified) from the Southwest Alaska stock. The Service sent requests for additional information on May 30, June 13, July 26, August 30, September 25, and October 5, 2023. We received updated versions of the request on July 17, September 5, and October 9. The Service determined the October 9, 2023, application to be adequate and complete. Trident expects take by harassment may occur during the construction of their crew bunkhouse and associated facilities in Near Island Channel at Kodiak, Alaska.

#### Description of Specified Activities and Specified Geographic Region

The specified activity (hereafter “project”) will include installation and removal of piles for the construction of a ~46-by-23-meter (m) (~150-by-75-foot

(ft)) dock at Trident’s crew bunkhouse in Kodiak, Alaska (see figure below), between March 2024 and March 2025. Trident will remove sixty 41-centimeter (cm) (16-inch (in)) diameter steel piles, seventy-five 36-cm (14-in) steel piles, and 100 36-cm (14-in) timber piles, and will permanently install the following types of piles: twenty-six 41-cm (16-in) and fifty-two 61-cm (24-in) diameter steel piles. Twenty 61-cm (24-in) diameter steel piles will be temporarily installed. Dock components that will be installed out of water include bull rail, fenders, mooring cleat, pre-cast concrete dock surface, and mast lights. Pile-driving activities will occur over 55 nonconsecutive days for approximately 94 hours during the course of 1 year from the date of issuance of the IHA. If the IHA is issued after Trident’s intended start date in March 2024, the schedule for conducting the specified activities may be adjusted accordingly. Pile installation will be done with a combination of vibratory and down-the-hole (DTH) drilling. Temporary and extant piles will be removed by the deadpull method; it is anticipated that up to 10 percent of piles may require vibratory removal. Materials and equipment will be transported via barges, and workers will be transported to and from the barge work platform via skiff.

Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.



Specified geographic region of project

### Description of Marine Mammals in the Specified Geographic Region

#### *Sea Otter Biology*

There are three sea otter stocks in Alaska: the Southeast Alaska stock, the Southcentral Alaska stock, and the Southwest Alaska stock. Only the Southwest Alaska stock is represented in the project area. Detailed information about the biology of this stock can be found in the most recent Southwest Alaska revised stock assessment report (USFWS 2023), announced in the **Federal Register** at 88 FR 53510, August 8, 2023, and also available at <https://www.regulations.gov/document/FWS-R7-ES-2022-0155-0012> and <https://www.fws.gov/media/northern-sea-otter-southwest-alaska-stock-assessment-report-0>.

Sea otters may be distributed anywhere within the specified project area other than upland areas; however, they generally occur in shallow water near the shoreline. They are most commonly observed within the 40-m (131-ft) depth contour (USFWS 2023), although they can be found in areas with deeper water. Ocean depth is

generally correlated with distance to shore, and sea otters typically remain within 1 to 2 kilometers (km) (0.62 to 1.24 miles (mi)) of shore (Riedman and Estes 1990). They tend to be found closer to shore during storms but venture farther out during good weather and calm seas (Lensink 1962; Kenyon 1969).

Sea otters are nonmigratory and generally do not disperse over long distances (Garshelis and Garshelis 1984), usually remaining within a few kilometers of their established feeding grounds (Kenyon 1981). Breeding males stay for all or part of the year in a breeding territory covering up to 1 km (0.62 mi) of coastline, while adult females maintain home ranges of approximately 8 to 16 km (5 to 10 mi), which may include one or more male territories. Juveniles move greater distances between resting and foraging areas (Lensink 1962; Kenyon 1969; Riedman and Estes 1990; Tinker and Estes 1996). Although sea otters generally remain local to an area, they are capable of long-distance travel. Sea otters in Alaska have shown daily movement distances greater than 3 km

(1.9 mi) at speeds up to 5.5 km per hour (3.4 mi per hour) (Garshelis and Garshelis 1984).

#### *Southwest Alaska Sea Otter Stock*

The Southwest Alaska sea otter stock occurs from western Cook Inlet to Attu Island in the Aleutian chain (USFWS 2023). On August 9, 2005, the Southwest Alaska sea otter stock was listed as threatened under the Endangered Species Act (ESA) as a distinct population segment (DPS) (70 FR 46366). This stock is divided into five management units: Western Aleutians; Eastern Aleutians; South Alaska Peninsula; Bristol Bay; and Kodiak, Kamishak, and Alaska Peninsula (USFWS 2013, 2023). The specified geographic region occurs within the ranges of the Kodiak, Kamishak, and Alaska Peninsula management units.

The range of the Kodiak, Kamishak, and Alaska Peninsula management unit extends from Castle Cape to Western Cook Inlet on the southern side of the Alaska Peninsula and also encompasses Kodiak Island (USFWS 2020). The specified geographic region is within

the range of the sea otter population at Kodiak Archipelago. Waters surrounding Kodiak Island were surveyed in 2014 using the Bodkin-Udevitz aerial survey protocol (Cobb 2018). The estimate of sea otter density that resulted from these surveys is 2.54 animals per square kilometer (km<sup>2</sup>). Data collected by ABR, Inc.—Environmental Research & Services during work at the Kodiak ferry terminal (ABR 2016) indicate periods with presence of higher numbers of sea otters, occasionally with rafts of above 200 animals and daily counts of sea otters totaling over 450 individuals. It is likely that sea otters use Near Island Channel, which is relatively protected in comparison with surrounding coastline, for shelter during storm events.

### Potential Impacts of the Specified Activities on Marine Mammals

#### *Effects of Noise on Sea Otters*

We characterized “noise” as sound released into the environment from human activities that exceeds ambient levels or interferes with normal sound production or reception by sea otters. The terms “acoustic disturbance” or “acoustic harassment” are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the distance of the sea otter from the sound source, the level and intensity of sound the sea otter receives, background noise levels, noise frequency, noise duration, and whether the noise is pulsed or continuous. The actual noise level perceived by individual sea otters will also depend on whether the sea otter is above or below water and atmospheric and environmental conditions. Temporary disturbance of sea otters or localized displacement reactions are the most likely effects to occur from noise exposure.

#### *Sea Otter Hearing*

Pile driving and marine construction activities will fall within the hearing range of sea otters. Controlled sound exposure trials on southern sea otters (*Enhydra lutris nereis*) indicate that sea otters can hear frequencies between 125 hertz (Hz) and 38 kilohertz (kHz) with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter’s hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than terrestrial mustelids but was similar to that of a California sea lion

(*Zalophus californianus*). However, the sea otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125–1 kHz were between 116–101 decibels (dB), respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane et al. 1995, Ghoul and Reichmuth 2012).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Unlike other marine mammals, sea otters do not rely on sound to orient themselves, locate prey, or communicate under water; therefore, masking of communications by anthropogenic sound is less of a concern than for other marine mammals. However, 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).

#### *Exposure Thresholds*

##### Underwater Sounds

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment to marine mammal species, including sea otters, have been established using the same methods as those used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a permanent shift in sensitivity of hearing (*i.e.*, a permanent threshold shift (PTS) (NMFS 2018)). PTS occurs when noise exposure causes hairs within the inner ear system to die (Ketten 2012). Although the effects of PTS are, by definition, permanent, PTS does not equate to total hearing loss.

Sound exposure thresholds incorporate two metrics of exposure: the peak level of instantaneous exposure likely to cause PTS and the cumulative sound exposure level (SEL<sub>CUM</sub>) during a 24-hour period. They also include weighting adjustments for the sensitivity of different species to varying frequencies. PTS-based injury criteria were developed from theoretical extrapolation of observations of temporary threshold shifts (TTS) detected in lab settings during sound exposure trials (Finneran 2015). Southall and colleagues (2019) predict PTS for sea otters, which are included in the “other marine carnivores” category, will occur at 232 dB peak or

203 dB SEL<sub>CUM</sub> for impulsive underwater sound and 219 dB SEL<sub>CUM</sub> for non-impulsive (continuous) underwater sound.

Thresholds based on TTS have been used as a proxy for Level B harassment (*i.e.*, 70 FR 1871, January 11, 2005; 71 FR 3260, January 20, 2006; 73 FR 41318, July 18, 2008). Southall et al. (2007) derived TTS thresholds for pinnipeds (walruses, seals, and sea lions) based on 212 dB peak and 171 dB SEL<sub>CUM</sub>. Exposures resulting in TTS in pinnipeds were found to range from 152 to 174 dB (183 to 206 dB SEL) (Kastak et al. 2005), with a persistent TTS, if not a PTS, after 60 seconds of 184 dB SEL (Kastak et al. 2008). Kastelein et al. (2012) found small but statistically significant TTS at approximately 170 dB SEL (136 dB, 60 minutes) and 178 dB SEL (148 dB, 15 minutes). Based on these findings, Southall et al. (2019) developed TTS thresholds for sea otters, which are included in the “other marine carnivores” category, of 188 dB SEL<sub>CUM</sub> for impulsive sounds and 199 dB SEL<sub>CUM</sub> for non-impulsive sounds.

The NMFS (2018) criteria do not identify thresholds for avoidance of Level B harassment. For pinnipeds (seals and sea lions), NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulsive noise and a 120-dB threshold for continuous noise (NMFS 1998, HESS 1999, NMFS 2018). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (*e.g.*, Malme et al. 1983; Malme and Miles 1983; Richardson et al. 1986, 1995) and from equating Level B harassment with noise levels capable of causing TTS in lab settings. Southall et al. (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses from pinnipeds in water. However, they found behavioral effects, including avoidance, become more likely in the range between 120 to 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 to 180 dB. Wood et al. (2012) adapted the approach identified in Southall et al. (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine mammals, including pinnipeds, these response rates were set at sound pressure levels of 140, 160, and 180 dB, respectively.

We have evaluated these thresholds and determined that the Level B threshold of 120 dB for non-impulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies in which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise (Malme et al. 1983; Malme and Miles 1983). During these playback studies, southern sea otter responses to industrial noise were also monitored (Riedman 1983, 1984). Gray whales exhibited avoidance to industrial noise at the 120-dB threshold; however, there was no evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the different range of frequencies to which sea otters and gray whales are sensitive, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses, particularly for low-frequency sound.

Based on the lack of sea otter disturbance response or any other reaction to the playback studies from

the 1980s, as well as the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to continuous underwater noise.

Based on the best available scientific information about sea otters, and closely related marine mammals when sea otter data are limited, the Service has set 160 dB of received underwater sound as a threshold for Level B harassment by disturbance for sea otters for this proposed IHA. Exposure to unmitigated in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and non-impulsive sound sources—will be considered by the Service as Level B harassment. Thresholds for Level A harassment (which entails the potential for injury) will be 232 dB peak or 203 dB SEL<sub>CUM</sub> for impulsive sounds and

219 dB SEL<sub>CUM</sub> for continuous sounds (table 1).

**Airborne Sounds**

The NMFS (2018) guidance neither addresses thresholds for preventing injury or disturbance from airborne noise, nor provides thresholds for avoidance of Level B harassment. Southall et al. (2007) suggested thresholds for PTS and TTS for sea lions exposed to nonpulsed airborne noise of 172.5 and 159 dB re (20 μPa)<sup>2</sup>-s SEL. Conveyance of underwater noise into the air is of little concern since the effects of pressure release and interference at the water’s surface reduce underwater noise transmission into the air. For activities that create both in-air and underwater sounds, we will estimate take based on parameters for underwater noise transmission. Considering sound energy travels more efficiently through water than through air, this estimation will also account for exposures to sea otters at the surface.

**TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR “OTHER MARINE CARNIVORES,” WHICH INCLUDES SEA OTTERS**

	TTS			PTS		
	Non-impulsive	Impulsive		Non-impulsive	Impulsive	
	SEL <sub>CUM</sub>	SEL <sub>CUM</sub>	Peak SPL	SEL <sub>CUM</sub>	SEL <sub>CUM</sub>	Peak SPL
Air .....	157	146	170	177	161	176
Water .....	199	188	226	219	203	232

**Note:** Values are weighted for other marine carnivores’ hearing thresholds and given in cumulative sound exposure level (SEL<sub>CUM</sub> dB re (20 micropascal (μPa) in air and SEL<sub>CUM</sub> dB re 1 μPa in water) for impulsive and non-impulsive sounds and unweighted peak sound pressure level (SPL) in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only).

*Evidence From Sea Otter Studies*

Sea otters may be more resistant to the effects of sound disturbance and human activities than other marine mammals. For example, observers have noted no changes from southern sea otters in regard to their presence, density, or behavior in response to underwater sounds from industrial noise recordings at 110 dB and a frequency range of 50 Hz to 20 kHz and airguns, even at the closest distance of 0.5 nautical miles (<1 km or 0.6 mi) (Riedman 1983). Southern sea otters did not respond noticeably to noise from a single 1,638 cubic centimeters (cm<sup>3</sup>) (100 cubic inches [in<sup>3</sup>]) airgun, and no sea otter disturbance reactions were evident when a 67,006 cm<sup>3</sup> (4,089 in<sup>3</sup>) airgun array was as close as 0.9 km (0.6 mi) to sea otters (Riedman 1983, 1984). However, southern sea otters displayed slight reactions to airborne engine noise (Riedman 1983).

Northern sea otters were observed to exhibit a limited response to a variety of airborne and underwater sounds, including a warble tone, sea otter pup calls, calls from killer whales (*Orcinus orca*) (which are predators to sea otters), air horns, and an underwater noise harassment system designed to drive marine mammals away from crude oil spills (Davis et al. 1988). These sounds elicited reactions from northern sea otters, including startle responses and movement away from noise sources. However, these reactions were observed only when northern sea otters were within 100 to 200 m (328 to 656 ft) of noise sources. Further, northern sea otters appeared to become habituated to the noises within 2 hours or, at most, 3–4 days (Davis et al. 1988).

Noise exposure may be influenced by the amount of time sea otters spend at the water’s surface. Noise at the water’s surface can be attenuated by turbulence from wind and waves more quickly

compared to deeper water, reducing potential noise exposure (Greene and Richardson 1988, Richardson et al. 1995). Additionally, turbulence at the water’s surface limits the transference of sound from water to air. A sea otter with its head above water will be exposed to only a small fraction of the sound energy traveling through the water beneath it. The average amount of time that sea otters spend above the water each day while resting and grooming varies between males and females and across seasons (Esslinger et al. 2014, Zellmer et al. 2021). For example, female sea otters foraged for an average of 8.78 hours per day compared to male sea otters, which foraged for an average of 7.85 hours per day during the summer months (Esslinger et al. 2014). Male and female sea otters spend an average of 63 to 67 percent of their day at the surface resting and grooming during the summer months (Esslinger et al. 2014). Few studies have evaluated

foraging times during the winter months. Garshelis et al. (1986) found that foraging times increased from 5.1 hours per day to 16.6 hours per day in the winter; however, Gelatt et al. (2002) did not find a significant difference in seasonal foraging times. It is likely that seasonal variation is determined by seasonal differences in energetic demand and the quality and availability of prey sources (Esslinger et al. 2014). These findings suggest that the large portion of the day sea otters spend at the surface may help limit sea otters' exposure during noise-generating operations.

Sea otter sensitivity to industrial activities may be influenced by the overall level of human activity within the sea otter population's range. In locations that lack frequent human activity, sea otters appear to have a lower threshold for disturbance. Sea otters in Alaska exhibited escape behaviors in response to the presence and approach of vessels (Udevitz et al. 1995). Behaviors included diving or actively swimming away from a vessel, entering the water from haulouts, and disbanding groups with sea otters swimming in multiple different directions (Udevitz et al. 1995). Sea otters in Alaska were also observed to avoid areas with heavy boat traffic in the summer and return to these areas during seasons with less vessel traffic (Garshelis and Garshelis 1984). In Cook Inlet, sea otters drifting on a tide trajectory that would have taken them within 500 m (0.3 mi) of an active offshore drilling rig were observed to swim in order to avoid a close approach of the drilling rig despite near-ambient noise levels (BlueCrest 2013).

Individual sea otters in Near Island Channel will likely show a range of responses to noise from pile-driving activities. Some sea otters will likely dive, show startle responses, change direction of travel, or prematurely surface. Sea otters reacting to pile-driving activities may divert time and attention from biologically important behaviors, such as feeding and nursing pups. Sea otter responses to disturbance can result in energetic costs, which increases the amount of prey required by sea otters (Barrett 2019). This increased prey consumption may impact sea otter prey availability and cause sea otters to spend more time foraging and less time resting (Barrett 2019). Some sea otters may abandon the project area and return when the disturbance has ceased. Based on the observed movement patterns of sea otters (*i.e.*, Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990; Tinker and

Estes 1996), we expect some individuals will respond to pile-driving activities by dispersing to nearby areas of suitable habitat; however, other sea otters, especially territorial adult males, are less likely to be displaced.

#### *Consequences of Disturbance*

The reactions of wildlife to disturbance can range from short-term behavioral changes to long-term impacts that affect survival and reproduction. When disturbed by noise, animals may respond behaviorally (*e.g.*, escape response) or physiologically (*e.g.*, increased heart rate, hormonal response) (Harms et al. 1997, Tempel and Gutiérrez 2003). Theoretically, the energy expense and associated physiological effects from repeated disturbance could ultimately lead to reduced survival and reproduction (Gill and Sutherland 2000, Frid and Dill 2002). For example, South American sea lions (*Otaria byronia*) visited by tourists exhibited an increase in the state of alertness and a decrease in maternal attendance and resting time on land, thereby potentially reducing population size (Pavez et al. 2015). In another example, killer whales that lost feeding opportunities due to boat traffic faced a substantial (18 percent) estimated decrease in energy intake (Williams et al. 2006). In severe cases, such disturbance effects could have population-level consequences. For example, increased disturbance by tourism vessels has been associated with a decline in abundance of bottlenose dolphins (*Tursiops* spp.) (Bejder et al. 2006, Lusseau et al. 2006). However, these examples evaluated sources of disturbance that were longer term and more consistent than the temporary and intermittent nature of the specified project activities.

These examples illustrate direct effects on survival and reproductive success, but disturbances can also have indirect effects. Response to noise disturbance is considered a nonlethal stimulus that is similar to an antipredator response (Frid and Dill 2002). Sea otters are susceptible to predation, particularly from killer whales and eagles, and have a well-developed antipredator response to perceived threats. For example, the presence of a harbor seal (*Phoca vitulina*) did not appear to disturb southern sea otters, but they demonstrated a fear response in the presence of a California sea lion by actively looking above and beneath the water (Limbaugh 1961).

Although an increase in vigilance or a flight response is nonlethal, a tradeoff occurs between risk avoidance and

energy conservation. An animal's reactions to noise disturbance may cause stress and direct an animal's energy away from fitness-enhancing activities such as feeding and mating (Frid and Dill 2002, Goudie and Jones 2004). For example, southern sea otters in areas with heavy recreational boat traffic demonstrated changes in behavioral time budgeting, showing decreased time resting and changes in haulout patterns and distribution (Benham 2006, Maldini et al. 2012). Chronic stress can also lead to weakened reflexes, lowered learning responses (Welch and Welch 1970, van Polanen Petel et al. 2006), compromised immune function, decreased body weight, and abnormal thyroid function (Selye 1979).

Changes in behavior resulting from anthropogenic disturbance can include increased agonistic interactions between individuals or temporary or permanent abandonment of an area (Barton et al. 1998). Additionally, the extent of previous exposure to humans (Holcomb et al. 2009), the type of disturbance (Andersen et al. 2012), and the age or sex of the individuals (Shaughnessy et al. 2008, Holcomb et al. 2009) may influence the type and extent of response in individual sea otters.

#### *Vessel Activities*

Vessel collisions with marine mammals can result in death or serious injury. Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus 2001). An animal may be harmed by a vessel when the vessel runs over the animal at the surface, the animal hits the bottom of a vessel while the animal is surfacing, or the animal is cut by a vessel's propeller.

Vessel strike has been documented as a cause of death across all three stocks of northern sea otters in Alaska. Since 2002, the Service has conducted 1,433 sea otter necropsies to determine cause of death, disease incidence, and the general health status of sea otters in Alaska. Vessel strike or blunt trauma was identified as a definitive or presumptive cause of death in 65 cases (4 percent) (USFWS 2020). In most of these cases, trauma was determined to be the ultimate cause of death; however, there was a contributing factor, such as disease or biotoxin exposure, which incapacitated the sea otter and made it more vulnerable to vessel strike (USFWS 2023).

Vessel speed influences the likelihood of vessel strikes involving sea otters. The probability of death or serious injury to a marine mammal increases as

vessel speed increases (Laist et al. 2001, Vanderlaan and Taggart 2007). Sea otters spend a considerable portion of their time at the water's surface (Esslinger et al. 2014). They are typically visually aware of approaching vessels and can move away if a vessel is not traveling too quickly. Mitigation measures to be applied to vessel operations to prevent collisions or interactions are included below in the proposed authorization portion of this document under *Avoidance and Minimization*.

Sea otters exhibit behavioral flexibility in response to vessels, and their responses may be influenced by the intensity and duration of the vessel's activity. As noted above, sea otter populations in Alaska were observed to avoid areas with heavy vessel traffic but return to those same areas during seasons with less vessel traffic (Garshelis and Garshelis 1984). Sea otters have also shown signs of disturbance or escape behaviors in response to the presence and approach of survey vessels, including sea otters diving and/or actively swimming away from a vessel, sea otters on haulouts entering the water, and groups of sea otters disbanding and swimming in multiple different directions (Udevitz et al. 1995).

Additionally, sea otter responses to vessels may be influenced by the sea otter's previous experience with vessels. Groups of southern sea otters in two locations in California showed markedly different responses to kayakers approaching to within specific distances, suggesting a different level of tolerance between the groups (Gunvalson 2011). Benham (2006) found evidence that the sea otters exposed to high levels of recreational activity may have become more tolerant than individuals in less-disturbed areas. Sea otters off the California coast showed only mild interest in vessels passing within hundreds of meters and appeared to have habituated to vessel traffic (Riedman 1983, Curland 1997). These findings indicate that sea otters may adjust their responses to vessel activities depending on the level of activity. Vessel activity during the project includes the transit of four barges for materials and construction, all of which will remain onsite, mostly stationary, to support the work; additionally, four skiffs will be used during the project for transporting workers short distances to the crane barges. Vessels will not be used extensively or over a long duration during the planned work; therefore, we do not anticipate that sea otters will

experience changes in behavior indicative of tolerance or habituation.

#### *Effects on Sea Otter Habitat and Prey*

Physical and biological features of habitat essential to the conservation of sea otters include the benthic invertebrates that sea otters eat and the shallow rocky areas and kelp beds that provide cover from predators. Sea otter habitat in the project area includes coastal areas within the 40-m (131-ft) depth contour where high densities of sea otters have been detected.

Industrial activities, such as pile driving, may generate in-water noise at levels that can temporarily displace sea otters from important habitat and impact sea otter prey species. The primary prey species for sea otters are sea urchins (*Strongylocentrotus* spp. and *Mesocentrotus* spp.), abalone (*Haliotis* spp.), clams (e.g., *Clinocardium nuttallii*, *Leukoma staminea*, and *Saxidomus gigantea*), mussels (*Mytilus* spp.), crabs (e.g., *Metacarcinus magister*, *Pugettia* spp., *Telemessus cheiragonus*, and *Cancer* spp.), and squid (*Loligo* spp.) (Tinker and Estes 1996, LaRoche et al. 2021). When preferential prey are scarce, sea otters will also eat kelp, slow-moving benthic fishes, sea cucumbers (e.g., *Apostichopus californicus*), egg cases of rays, turban snails (*Tegula* spp.), octopuses (e.g., *Octopus* spp.), barnacles (*Balanus* spp.), sea stars (e.g., *Pycnopodia helianthoides*), scallops (e.g., *Patinopecten caurinus*), rock oysters (*Saccostrea* spp.), worms (e.g., *Eudistylia* spp.), and chitons (e.g., *Mopalia* spp.) (Riedman and Estes 1990, Davis and Bodkin 2021).

Several studies have addressed the effects of noise on invertebrates (Tidau and Briffa 2016, Carroll et al. 2017). Behavioral changes, such as an increase in lobster (*Homarus americanus*) feeding levels (Payne et al. 2007), an increase in avoidance behavior by wild-caught captive reef squid (*Sepioteuthis australis*) (Fewtrell and McCauley 2012), and deeper digging by razor clams (*Sinonovacula constricta*) (Peng et al. 2016) have been observed following experimental exposures to sound. Physical changes have also been observed in response to increased sound levels, including changes in serum biochemistry and hepatopancreatic cells in lobsters (Payne et al. 2007) and long-term damage to the statocysts required for hearing in several cephalopod species (André et al. 2011, Solé et al. 2013). De Soto et al. (2013) found impaired embryonic development in scallop (*Pecten novaezelandiae*) larvae when exposed to 160 dB. Christian et al. (2003) noted a reduction in the speed of

egg development of bottom-dwelling crabs following exposure to noise; however, the sound level (221 dB at 2 m or 6.6 ft) was far higher than the planned project activities will produce. Industrial noise can also impact larval settlement by masking the natural acoustic settlement cues for crustaceans and fish (Pine et al. 2012, Simpson et al. 2016, Tidau and Briffa 2016).

While these studies provide evidence of deleterious effects to invertebrates as a result of increased sound levels, Carroll et al. (2017) caution that there is a wide disparity between results obtained in field and laboratory settings. In experimental settings, changes were observed only when animals were housed in enclosed tanks, and many were exposed to prolonged bouts of continuous, pure tones. We would not expect similar results in open marine conditions. It is unlikely that noises generated by project activities will have any lasting effect on sea otter prey given the short-term duration of sounds produced by each component of the planned work.

Noise-generating activities that interact with the seabed can produce vibrations, resulting in the disturbance of sediment and increased turbidity in the water. Although turbidity is likely to have little impact on sea otters and prey species (Todd et al. 2015), there may be some impacts from vibrations and increased sedimentation. For example, mussels (*Mytilus edulis*) exhibited changes in valve gape and oxygen demand, and hermit crabs (*Pagurus bernhardus*) exhibited limited behavioral changes in response to vibrations caused by pile driving (Roberts et al. 2016). Increased sedimentation is likely to reduce sea otter visibility, which may result in reduced foraging efficiency and a potential shift to less-preferred prey species. These outcomes may cause sea otters to spend more energy on foraging or processing the prey items; however, the impacts of a change in energy expenditure are not likely seen at the population level (Newsome et al. 2015). Additionally, the benthic invertebrates may be impacted by increased sedimentation, resulting in higher abundances of opportunistic species that recover quickly from industrial activities that increase sedimentation (Kotta et al. 2009). Although sea otter foraging could be impacted by industrial activities that cause vibrations and increased sedimentation, it is more likely that sea otters would be temporarily displaced from the project area due to impacts from noise rather than vibrations and sedimentation.



### Potential Impacts of the Specified Activities on Subsistence Uses

The planned specified activities will occur near marine subsistence harvest areas used by Alaska Native Peoples from Kodiak and the surrounding areas. Subsistence harvest of sea otters around Kodiak Island takes place primarily in Ouzinkie, Kodiak, and Port Lions with totals of 422, 192, and 130 sea otters taken, respectively, from 2017 through 2021.

The planned project would occur within the Kodiak city limits, where firearm use is prohibited. The area potentially affected by the planned project does not significantly overlap with current subsistence harvest areas. Construction activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. Despite no conflict with subsistence use being anticipated, the Service will conduct outreach with potentially affected communities to see whether there are any questions, concerns, or potential conflicts regarding subsistence use in those areas. If any conflicts are identified in the future, Trident will develop a plan of cooperation specifying the steps necessary to minimize any effects the project may have on subsistence harvest.

### Estimated Take

#### *Definitions of Incidental Take Under the Marine Mammal Protection Act*

Below we provide definitions of three potential types of take of sea otters. The Service does not anticipate and is not authorizing lethal take as a part of this proposed IHA; however, the definitions of these take types are provided for context and background:

**Lethal Take**—Human activity may result in biologically significant impacts to sea otters. In the most serious interactions, human actions can result in mortality of sea otters.

**Level A Harassment**—Human activity may result in the injury of sea otters. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

**Level B Harassment**—Level B Harassment, for nonmilitary readiness activities, means any act of pursuit, torment, or annoyance that 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, feeding, or sheltering. Changes in behavior that

disrupt biologically significant behaviors or activities for the affected animal are indicative of take by Level B harassment under the MMPA.

The Service has identified the following sea otter behaviors as indicative of possible Level B harassment:

- Swimming away at a fast pace on belly (*i.e.*, porpoising);
- Repeatedly raising the head vertically above the water to get a better view (*i.e.*, spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother's head;
- Abandoning prey or feeding area;
- Ceasing to nurse and/or rest (applies to dependent pups);
- Ceasing to rest (applies to independent animals);
- Ceasing to use movement corridors;
- Ceasing mating behaviors;
- Shifting/jostling/agitation in a raft so that the raft disperses;
- Sudden diving of an entire raft; or
- Flushing animals off a haulout.

This list is not meant to encompass all possible behaviors; other behavioral responses may equate to take by Level B harassment. Relatively minor changes in behavior such as increased vigilance or a short-term change in direction of travel are not likely to disrupt biologically important behavioral patterns, and the Service does not view such minor changes in behavior as indicative of a take by Level B harassment.

#### *Calculating Take*

We assumed all animals exposed to underwater sound levels that meet the acoustic exposure criteria defined above in *Exposure Thresholds* will experience take by Level A or Level B harassment due to exposure to underwater noise. Spatially explicit zones of ensonification were established around the planned construction location to estimate the number of otters that may be exposed to these sound levels.

We determined the number of otters expected to be present in Near Island Channel using sightings data collected during work conducted at the Kodiak Ferry terminal between November 2015 and June 2016 (ABR 2016). Sea otters were generally observed in singles or small groups with total daily counts of fewer than ~40 animals. However, there were several days on which rafts of 50 to 200 sea otters were observed with total daily counts of up to 459 animals. Sightings of large rafts and high daily totals coincided with days on which the observers noted higher sea states and it is likely that sea otters came from

nearby exposed coastline to seek shelter Near Island Channel during storm events.

The project can be divided into three major components: DTH drilling, pile driving using a vibratory driver, and vessel use to support construction. Each of these components will generate a different type of in-water noise. Vibratory pile driving and the use of vessels will produce non-impulsive or continuous noise and DTH drilling is considered to produce both impulsive and continuous noise (NMFS 2020). A summary of the sizes and types of piles, installation and removal methods, and time to install and remove piles is shown in table 2.

The level of sound anticipated from each project component was established using recorded data from several sources listed in table 3. We used the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which sound levels would attenuate to Level A harassment thresholds. Empirical data from the proxy projects were used to determine the distance at which sound levels would attenuate to Level B harassment thresholds (table 1). The weighting factor adjustment included in the NMFS user spreadsheet accounts for sounds created in portions of an organism's hearing range where they have less sensitivity. We used the weighting factor adjustment for otariid pinnipeds (eared seals) as they are the closest available physiological and anatomical proxy for sea otters. The spreadsheet also incorporates a transmission loss coefficient, which accounts for the reduction in sound level outward from a sound source. We used the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities to indicate practical spread (NMFS 2020).

We calculated the harassment zones for DTH drilling with input from NMFS. The sound pressure levels produced by DTH drilling were provided by NMFS in 2022 via correspondence with Solstice Alaska Consulting, who created the application for this IHA on behalf of Trident. We then used the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which these sounds would attenuate to Level A harassment thresholds. To estimate the distances at which sounds would attenuate to Level B harassment thresholds, we used the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities in a practical spreading loss model (NMFS 2020) to determine the



distance at which sound levels attenuate to 160 dB re 1 μPa.

TABLE 2—SUMMARY OF TIMING OF SOUND PRODUCTION, AND DAYS OF IMPACT FROM PILE INSTALLATION AND REMOVAL AT TRIDENT’S SITE AT NEAR ISLAND CHANNEL

Activity and pile diameter	Removal of existing piles			Temporary piles, 24-in		Permanent installation	
	16-in	14-in	14-in	Installation	Removal	16-in	24-in
Pile material .....	Steel .....	Steel .....	Timber .....	Steel .....	Steel .....	Steel .....	Steel.
Pile type .....	Pipe .....	H-pile .....	Round .....	Pipe .....	Pipe .....	Pipe .....	Pipe.
Total number of piles .....	60 .....	75 .....	100 .....	20 .....	20 .....	26 .....	52.
<b>Vibratory pile driving</b>							
Number of piles .....	60 .....	75 .....	100 .....	20 .....	20 .....	26 .....	52.
Maximum number of piles per day .....	20 .....	20 .....	25 .....	6 .....	8 .....	5 .....	4.
Vibratory time per pile (minutes) .....	2 .....	2 .....	2 .....	2 .....	2 .....	2 .....	2.
Vibratory time per day (minutes) .....	40 .....	40 .....	50 .....	12 .....	16 .....	10 .....	8.
Number of days .....	3 .....	4 .....	4 .....	3 .....	3 .....	5 .....	13.
Total vibratory time (minutes) .....	120 .....	150 .....	200 .....	40 .....	40 .....	52 .....	104.
<b>DTH drilling</b>							
Number of piles .....	0 .....	0 .....	0 .....	20 .....	0 .....	26 .....	52.
Maximum number of piles per day .....	0 .....	0 .....	0 .....	6 .....	0 .....	6 .....	4.
DTH time per pile (minutes) .....	0 .....	0 .....	0 .....	30 .....	0 .....	45 .....	60.
DTH time per day (minutes) .....	0 .....	0 .....	0 .....	180 .....	0 .....	270 .....	240.
Number of days .....	0 .....	0 .....	0 .....	3 .....	0 .....	4 .....	13.
Total DTH time (minutes) .....	0 .....	0 .....	0 .....	600 .....	0 .....	1,170 .....	3,120.

TABLE 3—SUMMARY OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE (m) FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS FOR SOUND-PRODUCING ACTIVITIES AT TRIDENT’S KODIAK BUNKHOUSE SITE

Source	Sound level (dB (RMS) re 1μPa at 10 m)	Reference	Distance to below Level A harassment threshold	Distance to below Level B harassment threshold	
14-in timber (vibratory removal) .....	162	Caltrans 2020 .....	0.3	13.6	
14-in H (vibratory removal) .....	150	Caltrans 2020 .....	0.2	2.2	
16-in steel (vibratory installation) .....	161	NAVFAC <sup>a</sup> 2015 (used 24-in piles) .....	0.1	11.7	
16-in steel (vibratory removal) .....	161	NAVFAC 2015 (used 24-in piles) .....	0.2	11.7	
24-in steel (vibratory installation—temporary piles) .....	161	NAVFAC 2015 .....	0.1	11.7	
24-in steel (vibratory installation—permanent piles) .....	161	NAVFAC 2015 .....	0.1	11.7	
24-in steel (vibratory removal) .....	161	NAVFAC 2015 .....	0.1	11.7	
Work skiff .....	160	Richardson et al. 1995; Kipple and Gabriele 2007 .....	0.0	10.0	
Tug operations .....	176	LGL/JASCO/Greeneridge 2014 .....	9.2	116.6	
<b>DTH Drilling</b>					
Source	db rms (bubble curtain)	db SEL (bubble curtain)	Reference	Distance to below Level A harassment threshold	Distance to below Level B harassment threshold
16-in steel installation .....	162 (167)	141 (146)	Heyvaert & Reyff 2021 (used 24-in piles); Guan & Miner 2020.	1.8	13.6
24-in steel DTH installation—temporary .....	162 (167)	154 (159)	Heyvaert & Reyff 2021 .....	10.3	13.6
24-in steel DTH installation—permanent .....	162 (167)	154 (159)	Heyvaert & Reyff 2021 .....	12.5	13.6

<sup>a</sup> Naval Facilities Engineering Command.

Sound levels for all sources are unweighted and given in dB re 1 μPa. Non-impulsive sounds are in the form of mean maximum root mean square (RMS) sound pressure level (SPL) as it is more conservative than cumulative sound exposure level (SEL) or peak SPL for these activities.

We used the ABR Environmental Research & Services 2016 data to derive a local density of sea otters in Near Island Channel on the days of highest presence and arrived at 710 animals per km<sup>2</sup>. Applying this density to the largest

Level B harassment zone for pile driving (14 m [46 ft]) yielded a result of approximately 1 individual otter exposed. Applying this density to the Level B harassment zone for heavy towing operations (117m [383 ft]) yielded a result of approximately 31 individual otters exposed. Although the harassment zone for the work skiff is sufficiently small to be easily monitored (10 m [33 ft]), the skiff will make multiple trips between the harbor and the work site each day. On days when several hundred sea otters occupy the

relatively small area of Near Channel, it would not be feasible for a protected species observer (PSO) to determine whether the individual animals present in the harassment zones remain constant over time. As such, we assumed that it was possible that each individual sea otter in Near Channel would enter a Level B harassment zone at least once over the course of each day of operations.

To estimate the number of sea otters anticipated in the waters surrounding Near Island Channel during the project,

we applied the distribution of daily sea otter counts observed during the Kodiak Ferry work (ABR 2016) to the length of

Trident’s work period (55 days). We used the result to estimate the daily sea otter counts anticipated during Trident’s

work period (table 4). The daily count range categories were selected based on natural breaks in the sightings data.

TABLE 4—DISTRIBUTION OF DAYS ANTICIPATED WITHIN TRIDENT’S 55-DAY WORK PERIOD FOR EACH CATEGORY OF DAILY SEA OTTER COUNTS AND ANTICIPATED TOTAL NUMBER OF EXPOSURES OF SEA OTTERS IN NEAR ISLAND CHANNEL OVER THE DURATION OF THE PROJECT. BASED ON SIGHTINGS DATA FROM OBSERVATIONS CONDUCTED AT KODIAK FERRY TERMINAL

[ABR 2016]

Range of daily sea otter count	Number of days in 55-day period	Exposures of sea otters throughout project
1 to 10 .....	19	190
11 to 20 .....	9	180
21 to 30 .....	4	120
31 to 40 .....	5	200
41 to 50 .....	3	150
51 to 60 .....	1	60
61 to 75 .....	2	150
76 to 85 .....	4	340
85 to 100 .....	2	200
101 to 135 .....	2	270
136 to 155 .....	1	155
156 to 225 .....	1	225
226 to 460 .....	2	920
Totals .....	55	3,160

We assumed that the different types of activities could occur either sequentially or concurrently and that the total number of days of work would equal the full 55-day work window. While it is possible that more than one type of activity will take place on some days, which would reduce the number of days of exposure within a year, we cannot know this information in advance. As such, the estimated number of days and, therefore, exposures over the duration of the project are the maximum possible for the planned work.

In order to minimize exposure of sea otters to sounds above Level A harassment thresholds, Trident will implement shutdown zones (appendix C in Solstice 2023) ranging from 10 to 15 m (33 to 49 ft), based on the pile size and type of pile driving or marine construction activity, where operations will cease should a sea otter enter or approach the specified zone. Because the shutdown radii are larger than the sound isopleths for Level A harassment, no Level A harassment is anticipated. Soft-start and zone clearance prior to startup will also limit the exposure of sea otters to sound levels that could cause PTS.

*Critical Assumptions*

We estimate that 3,160 takes of 460 sea otters by Level B harassment may occur due to Trident’s planned dock repair and construction activities. In

order to conduct this analysis and estimate the potential amount of take by harassment, several critical assumptions were made.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience significant biological consequences.

We used the sea otter presence for the Near Island Channel area from surveys and analyses conducted by ABR, Inc. (2016). Methods and assumptions for these surveys can be found in the original publication. We assumed that the distribution of daily total counts of sea otters during Trident’s work period would be similar to that observed during the Kodiak Ferry Terminal work.

We used sound source verification from recent pile-driving activities in a number of locations within and beyond Alaska to generate sound level estimates for construction activities. Environmental conditions in these locations, including water depth, substrate, and ambient sound levels are similar to those in the project location, but not identical. Further, estimation of ensonification zones were based on sound attenuation models using a practical spreading loss model. These factors may lead to actual sound values differing slightly from those estimated here.

We assumed that all piles will be installed and removed while submerged in water. Some piles will be located in the intertidal zone. Work performed at lower tidal heights would likely result in decreased transmission of sounds to the water column. However, as the timing of pile installation and removal was not known in advance, we accounted for the possibility that all work may occur at a tidal height that allows for full sound transmission.

Finally, the pile-driving activities described here will also create in-air noise. Because sea otters spend over half of their day with their heads above water (Esslinger et al. 2014), they will be exposed to an increase of in-air noise from construction equipment. However, we have calculated Level B harassment with the assumption that an individual may be harassed only one time per 24-hour period, and underwater sound levels will be more disturbing and extend farther than in-air noise. Thus, while sea otters may be disturbed by noise both in-air and underwater, we have relied on the more conservative underwater estimates.

*Sum of Harassment From All Sources*

The applicant plans to conduct pile driving and marine construction activities in Kodiak, Alaska, over the course of a year from the date of issuance of the IHA. Over the course of the project, we estimate 3,160 instances of take by Level B harassment of 460

northern sea otters from the Southcentral Alaska stock due to behavioral responses of TTS associated with noise exposure. Although multiple instances of Level B harassment of individual sea otters are expected, these events would not have significant consequences for the health, reproduction, or survival of affected animals and therefore would not rise to the level of an injury or Level A harassment.

The use of soft-start procedures, zone clearance prior to startup, and shutdown zones (appendix C in Solstice 2023) is anticipated to eliminate both the number of sea otters exposed to sounds above Level A harassment thresholds and the exposure time of any sea otters venturing into a Level A harassment zone. We therefore do not anticipate any losses of hearing sensitivity that might impact the health, reproduction, or survival of affected animals. We anticipate that PSOs will be able to reliably detect and prevent take by Level A harassment of sea otters beyond the largest sound isopleth for Level A harassment (15 m [45 ft]), therefore we do not anticipate that any sea otters will be exposed to sounds capable of causing PTS or Level A harassment.

#### Determinations and Findings

Sea otters exposed to sound from the specified activities are likely to respond with temporary behavioral modification or displacement. The specified activities could temporarily interrupt the feeding, resting, and movement of sea otters. Because activities will occur during a limited amount of time and in a localized region, the impacts associated with the project are likewise temporary and localized. The anticipated effects are short-term behavioral reactions and displacement of sea otters near active operations.

Sea otters that encounter the specified activity may exert more energy than otherwise due to temporary cessation of feeding, increased vigilance, and retreating from the project area. We expect that affected sea otters will tolerate this exertion without measurable effects on health or reproduction. The anticipated takes will be due to short-term Level B harassment in the form of TTS, startling reactions, or temporary displacement. The mitigation measures incorporated into Trident's request will eliminate occurrences of Level A harassment to the extent where take by Level A harassment is not anticipated.

With the adoption of the mitigation measures incorporated in Trident's request and required by this proposed

IHA, anticipated take was reduced. Those mitigation measures are further described below.

#### Small Numbers

To assess whether the authorized incidental taking would be limited to "small numbers" of marine mammals, the Service uses a proportional approach that considers whether the estimated number of marine mammals to be subjected to incidental take is small relative to the population size of the species or stock. Here, predicted levels of take were determined based on the estimated density of sea otters in the project area and ensonification zones developed using empirical evidence from similar geographic areas.

We estimate Trident's specified activities in the specified geographic region will result in no more than 3,160 takes of 460 sea otters by Level B harassment during the 1-year period of this proposed IHA (see *Sum of Harassment from All Sources*). Take of 460 animals is 0.9 percent of the best available estimate of the current Southwest Alaska stock size of 51,935 animals (USFWS 2023) ( $460 \div 51,935 \times 100 \approx 0.9$ ) and represents a "small number" of sea otters of that stock.

#### Negligible Impact

We propose a finding that any incidental take by harassment resulting from the specified activities cannot be reasonably expected to, and is not reasonably likely to, adversely affect the sea otter through effects on annual rates of recruitment or survival and will, therefore, have no more than a negligible impact on the Southwest Alaska stock of northern sea otters. In making this finding, we considered the best available scientific information, including the biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of marine mammals to this disturbance. In addition, we reviewed applicant-provided materials, information in our files and datasets, published reference materials, and species experts.

Sea otters are likely to respond to planned activities with temporary behavioral modification or temporary displacement. These reactions are not anticipated to have consequences for the long-term health, reproduction, or survival of affected animals. Most

animals will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected animals are expected to resume normal behaviors soon after exposure with no lasting consequences. Each sea otter is estimated to be exposed to construction noise for between 4 and 55 days, resulting in repeated exposures. However, injuries (*i.e.*, Level A harassment or PTS) due to chronic sound exposure is estimated to occur at a longer time scale (Southall et al. 2019). The area that will experience noise greater than Level B thresholds due to pile driving is small (less than 0.01 km<sup>2</sup>), and an animal that may be disturbed could escape the noise by moving to nearby quiet 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, and the amount of time it may take for permanent injury is considerably longer than that of mammals primarily under water. Some animals 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 total number of animals affected, and severity of impact is not sufficient to change the current population dynamics at the stock scale. Although the specified activities may result in approximately 3,160 incidental takes of 460 sea otters from the Southwest Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the specified activities as mitigated by the avoidance and minimization measures identified in Trident's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts to sea otters. These measures, along with the monitoring and reporting procedures, are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the specified project will have a negligible impact on the Southwest Alaska stock of northern sea otters.

### *Least Practicable Adverse Impacts*

We find that the mitigation measures required by this proposed IHA will affect the least practicable adverse impacts on the stock from any incidental take likely to occur in association with the specified activities. In making this finding, we considered the biological characteristics of sea otters, the nature of the specified activities, the potential effects of the activities on sea otters, the documented impacts of similar activities on sea otters, and alternative mitigation measures.

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 are 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). We assessed whether any additional, practicable requirements could be implemented to further reduce effects, but did not identify any.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Trident will implement mitigation measures, including the following:

- Using the smallest diameter piles practicable while minimizing the overall number of piles;
- Using a project design that does not include dredging or blasting;
- Using pile caps made of high-density polyethylene or ultra-high-molecular-weight polyethylene softening materials during pile driving;
- Foregoing the use of an impact hammer;
- Employing a deep bubble curtain during all DTH drilling to reduce noise impacts;
- Development of a marine mammal monitoring and mitigation plan;
- Establishment of shutdown and monitoring zones;
- Visual mitigation monitoring by designated PSOs;
- Site clearance before startup;
- Soft-start procedures; and
- Shutdown procedures.

The Service has not identified any additional (i.e., not already incorporated into Trident's request) mitigation or monitoring measures that are

practicable and would further reduce potential impacts to sea otters and their habitat.

### *Impact on Subsistence Use*

The project will not preclude access to harvest areas or interfere with the availability of sea otters for harvest. Additionally, the bunkhouse dock and associated facilities are located within the City of Kodiak, where firearm use is prohibited. We therefore propose a finding that Trident's anticipated harassment will not have an unmitigable adverse impact on the availability of any stock of northern sea otters for taking for subsistence uses. In making this finding, we considered the timing and location of the planned activities and the timing and location of subsistence harvest activities in the project area.

### **Monitoring and Reporting**

The purposes of the monitoring requirements are to document and provide data for assessing 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. Monitoring plans include steps to document when and how sea otters are encountered and their numbers and behaviors during these encounters. This information allows the Service to measure encounter rates and trends and to estimate numbers of animals potentially affected. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to the project activity.

As proposed, monitoring activities will be summarized and reported in formal reports. Trident must submit monthly reports for all months during which noise-generating work takes place as well as a final monitoring report that must be submitted no later than 90 days after the expiration of the IHA. 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 IHA. We will require approval of the monitoring results for continued operation under the IHA.

We find that these proposed 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 a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that authorizing the nonlethal, incidental, unintentional take by Level B harassment of up to 3,160 takes of 460 sea otters from the Southwest Alaska stock in the specified geographic region during the specified activities during the authorization period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this proposed IHA is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

#### *Endangered Species Act*

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. Because the Southwest Alaska stock is listed as threatened under the ESA, prior to finalizing the proposed IHA, if warranted, the Service will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of this IHA. These evaluations and findings will be made available on the Service's website at <https://ecos.fws.gov/ecp/report/biological-opinion>. The authorization of incidental take of sea otters and the measures included in the proposed IHA would not affect other listed species or designated critical habitat.

#### *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 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 Native people. Our efforts are guided by the following policies and directives:

- (1) The Native American Policy of the Service (January 20, 2016);
- (2) The Alaska Native Relations Policy (currently in draft form);

(3) Executive Order 13175 (January 9, 2000);

(4) Department of the Interior Secretary's Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), and 3342 (October 21, 2016);

(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.

We have evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and Organizations. The Service has determined that, due to this project's locations and activities, the Tribal Organizations and communities near Kodiak, Alaska, as well as relevant Alaska Native Claims Settlement Act corporations, will not be impacted by this project. However, we will be reaching out to them to inform them of the availability of this proposed IHA and offer them the opportunity to consult.

We invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA process.

### Proposed Authorization

We propose to authorize the nonlethal incidental take by Level B harassment of 3,160 takes of 460 sea otters from the Southwest Alaska stock. Authorized take may be caused by pile driving and marine construction activities conducted by Trident Seafoods Corporation (Trident) in Kodiak, Alaska, over the course of a year from the date of issuance of the IHA. We do not anticipate or authorize any take by Level A harassment or lethal take to sea otters resulting from these activities.

#### A. General Conditions for the Incidental Harassment Authorization (IHA)

(1) Activities must be conducted in the manner described in the October 9, 2023, revised request from Trident for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of sea otters whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

(2) If project activities cause unauthorized take (*i.e.*, greater than

3,160 takes of 460 northern sea otters from the Southwest Alaska stock, a form of take other than Level B harassment, or take of one or more sea otters through methods not described in the IHA), Trident must take the following actions:

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

(ii) Report the details of the incident to the Service within 48 hours; and

(iii) Suspend further activities until the Service has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

(3) All operations managers, vehicle operators, and machine operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

(4) This IHA will apply to activities associated with the specified project as described in this document and in Trident's revised request. Changes to the specified project without prior authorization may invalidate the IHA.

(5) Trident's revised request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The request includes:

(i) Trident's original request for an IHA, dated May 25, 2023;

(ii) Revised applications, dated September 5 and October 9, 2023;

(iii) Marine Mammal Mitigation and Monitoring Plan;

(iv) Bubble curtain schematics; and

(v) Pile coordinates.

(6) Operators will allow Service personnel or the Service's designated representative to visit project worksites to monitor for impacts to sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so. "Operators" are all personnel operating under Trident's authority, including all contractors and subcontractors.

#### B. Avoidance and Minimization

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

(2) If the number of sea otters present in the area of Near Island Channel exceeds 450, or if the number of sea otters present in a Level B monitoring zone exceeds 25, or if the combination of sea state and a high number of sea otters in the area is so high as to

preclude an accurate count, work will cease until PSOs can confirm that the number of sea otters in the area is less than above limits.

(3) During all pile-installation activities, regardless of predicted sound levels, a physical interaction shutdown zone of 10 m (33 ft) must be enforced. If a sea otter enters the shutdown zone, in-water activities must be delayed until either the animal has been visually observed outside the shutdown zone, or 15 minutes have elapsed since the last observation time without redetection of the animal. A shutdown zone of 15 m (49 ft) will be enforced for DTH drilling where the 160 dB sound isopleth exceeds the 10 m (33 ft) physical interaction shutdown zone.

(4) 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.

(5) All in-water work along the shoreline must be conducted during low tide when the site is dewatered to the maximum extent practicable.

### C. Mitigation Measures for Vessel Operations

Vessel operators must take every precaution to avoid harassment of sea otters when a vessel is operating near these animals. The applicant must carry out the following measures:

(1) Vessels must remain at least 500 m (0.3 mi) from rafts of sea otters unless safety is a factor. Vessels must reduce speed and maintain a distance of 100 m (328 ft) from all sea otters unless safety is a factor.

(2) Vessels must not be operated in such a way as to separate members of a group of sea otters from other members of the group and must avoid alongshore travel 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 avoid 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)(12) through (15) of this section.

### D. Monitoring

(1) 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.

(2) Duties of the 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.

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

(4) All PSOs will complete a training course designed to familiarize individuals with monitoring and data collection procedures. 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 Service to review.

(5) Observers 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.

(6) 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, wind force, and weather will be collected at the beginning and end of a monitoring period, every hour in between, at the change of an observer, and upon sightings of sea otters.

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

(iv) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and underwater sound 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) Observers will note any instances of animals 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 pile installation.

#### **E. Measures To Reduce Impacts to Subsistence Users**

Prior to conducting the work, Trident will take the following steps to reduce potential effects on subsistence harvest of sea otters:

(1) Avoid work in areas of known sea otter subsistence harvest;

(2) Discuss the planned activities with subsistence stakeholders including Southwest Alaska villages and traditional councils;

(3) Identify and work to resolve concerns of stakeholders regarding the project's effects on subsistence hunting of sea otters; and

(4) If any concerns remain, develop a POC in consultation with the Service and subsistence stakeholders to address these concerns.

#### **F. Reporting Requirements**

(1) Trident must notify the Service at least 48 hours prior to commencement of activities.

(2) Monthly reports will be submitted to the Service's Marine Mammal Management office (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 sighted; 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.

(3) A final report will be submitted to the Service's MMM within 90 days after completion of work or expiration of the IHA. The report will include:

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

(ii) A description of all project activities, along with any additional work yet to be done. Factors influencing visibility and detectability of marine mammals (*e.g.*, sea state, number of observers, and fog and glare) will be discussed.

(iii) A description of the factors affecting the presence and distribution of sea otters (*e.g.*, weather, sea state, and project activities). An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to 160 dB (based on visual observation).

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

(v) 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 Service in the form of electronic database or spreadsheet files.

(4) 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 Service within 24 hours of the discovery to either the Service'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 Service.

(5) All reports shall be submitted by email to [fw7\\_mmm\\_reports@fws.gov](mailto:fw7_mmm_reports@fws.gov).

Trident must notify the Service upon project completion or end of the work season.

#### **Request for Public Comments**

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or both documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed authorization, draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The Service will consider all comments that are received before the close of the comment period (see **DATES**). The Service does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record

for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Peter Fasbender,**

*Assistant Regional Director for Fisheries and Ecological Services, Alaska Region.*

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

[245A2100DD/AAKC001030/  
AOA501010.999900]

**Land Acquisitions; Pascua Yaqui Tribe, Eleven Parcels, Pima County, Arizona**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Assistant Secretary—Indian Affairs made a final agency determination to acquire in trust 25.56 acres, more or less, of land consisting of eleven off-reservation parcels in Pima County, Arizona, (Site) for the Pascua Yaqui Tribe of Arizona, (Tribe) for gaming and other purposes.

**DATES:** This final determination was made on December 29, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, [paula.hart@bia.gov](mailto:paula.hart@bia.gov), (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire the Site, consisting of 25.56 acres, more or less, in trust for the Tribe under the authority of the Old Pascua Community Land Acquisition Act of 2022, Public Law 117-275, 136 Stat. 4184 (2022), and Department regulations.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Site in the name of the United States of America in trust for the Tribe upon fulfillment of all Departmental requirements. The legal description for the Site is as follows:

**Legal Description of Property**

*Description: 901 W Grant, 2395 N Fairview, and 1055 W Grant, 901 W Grant and 2395 N Fairview aka 11516001B and 11516001C*

Parcel No. 1: APN: 115-16-001B

A parcel of land located in the Northwest quarter of Section 2, Township 14 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the North quarter corner of said Section 2, being a brass cap survey monument at the intersection of the centerline of Grant Road and the Westerly right-of-way of Fairview Avenue, each public roadways within the City of Tucson, Arizona;

THENCE along the centerline of Grant Road, North 89°05'59" West, 90.07 feet to a point;

THENCE South 00°54'01" West, 60.00 feet to the Northeast corner of Lot 13 of Grant Interstate Commons, a subdivision of record in Book 46 of Maps and Plats. Page 27, records of Pima County, Arizona, being the POINT OF BEGINNING of the herein described parcel;

THENCE along the Easterly boundary of Lot 13, as amended by Scrivener's Error recorded in Docket 10302. Page 146, South 00°13'42" East, 138.47 feet to a point;

THENCE North 89°42'33" East, 92.00 feet to a point on the Westerly right-of-way of Fairview Avenue; THENCE along said right-of-way, North 00°27'04" West, 83.83 feet to the beginning of a curve tangent to the line;

THENCE Northerly, Northwesterly and Westerly 83.55 feet along the curve concave to the Southwest, having a radius of 54.00 feet and a central angle of 88°38'55" to a point on the Southerly right-of-way of Grant Road;

THENCE along the Grant Road right-of-way, North 89°05'59" West tangent to the curve 38.74 feet to the POINT OF BEGINNING of the herein described parcel.

Parcel No. 2: APN: 11516001C

A parcel of land located in the Northwest quarter of Section 2, Township 14 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, more particularly described as follows:

COMMENCING at the North quarter corner of said Section 2, being a brass cap survey monument at the intersection of the centerline of Grant Road and the Westerly right-of-way of Fairview Avenue, each public roadway within the City of Tucson, Arizona;

THENCE along the centerline of Grant Road, North 89°05'59" West, 90.07 feet to a point;

THENCE South 00°54'01" West, 60.00 feet to the Northeast corner of Lot 13 of Grant Interstate Commons, a subdivision of record in Book 46 of Maps and Plats. Page 27, records of Pima County, Arizona;

THENCE along the Easterly boundary of Lot 13, as amended by Scrivener's Error recorded in Docket 10302. Page 146, South 00°13'42" East, 138.47 feet to the POINT OF BEGINNING of the herein described parcel;

THENCE continuing South 00°13'42" East, along the Easterly boundaries of Lots 13 and 12 of said subdivision, a distance of 259.48 feet to the Southeastern corner of Lot 12;

THENCE South 89°05'20" East, 93.03 feet to a point on the Westerly right-of-way of Fairview Avenue;

THENCE along said right-of-way, North 00°27'04" West, 261.44 feet to a point;

THENCE South 89°42'33" West, 92.00 feet to the POINT OF BEGINNING of the herein described.

*Description: 1055 W Grant aka APN 115160130*

Parcel No. 1

A portion of the Northwest Quarter of Section 2, Township 14 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

Beginning at a point in the East line of said Northwest Quarter of Section 2, which point is South 0 degrees 27 minutes 07 seconds East, along said East line, a distance of 678.02 feet from the North quarter corner of said Section 2, which point of beginning is identical with the point of beginning of Parcel No. 1 as described in Deed of Trust recorded in the Office of the County Recorder of Pima County, Arizona, in Docket 1655 at page 201;

Thence North 89 degrees 57 minutes 43 seconds West, along a portion of the North line of said Parcel No. 1 described in Docket 1655 at page 201, and its Westerly extension, a distance of 586.40 feet to a point in the Southerly extension of the West line of Parcel No. 2 as described in said Docket 1655 at page 201;

Thence South 0 degrees 29 minutes 32 seconds East, along said Southerly extension, a distance of 93.20 feet to a point in the center line (10 feet from east side) of that certain easement conveyed to the City of Tucson by instrument recorded in said office of the County Recorder in Docket 2005 at page 138;

Thence South 52 degrees 58 minutes 37 seconds West, along said center line,