

been omitted from draft FIPS 204, was restored to the hint unpacking algorithm. Additionally, rather than using just the first 256 bits of the commitment hash, `-c`, as the input to `SampleInBall`, the full commitment hash is used. Also, `ExpandMask` is modified to take output bits from the beginning rather than at an offset.

Based on comments that were submitted on draft FIPS 204, more details were provided for the pre-hash version, `HashML-DSA`. These modifications include domain separation for the cases in which the message is signed directly and cases in which a digest of the message is signed. The changes were made by modifying the inputs to the internal signing and verification functions.

The differences between SPHINCS+ specification and SLH-DSA are described in Appendix A of FIPS 205. Based on comments that were submitted on draft FIPS 205, the SLH-DSA signature generation and verification functions were modified to include domain separation cases in which the message is signed directly and cases in which a digest of the message is signed. The changes were made by modifying the inputs to the signing and verification functions.

Authority: 40 U.S.C. 11331(f), 15 U.S.C. 278g-3.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024-17956 Filed 8-13-24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE180]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental To Ferndale Refinery Dock Maintenance and Pile Replacement Activities in Ferndale, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Phillips 66 Co. to incidentally harass

marine mammals during construction activities associated with a dock replacement project in Ferndale, Washington.

DATES: This authorization is effective from August 1 through July 31, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-phillips-66-cos-ferndale-refinery-dock-maintenance-and-pile>. In case of problems accessing these documents, please call the contact listed below.

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

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 29, 2024 we received a request from Phillips 66 for an IHA to take marine mammals incidental to

Ferndale Refinery Dock Maintenance and Pile Replacement Activities in Ferndale, Washington. Following NMFS’ review of the application, Phillips 66 submitted revised versions on May 16 and May 20, 2024. The application was deemed adequate and complete on May 21, 2024. Phillips 66 has requested authorization of take by Level B harassment for harbor seal, California sea lion, Steller sea lion and harbor porpoise. Neither Phillips 66 nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed authorization to the final authorization.

Description of the Specified Activity

Phillips 66 is planning to modernize the existing timber loading dock (on the southeastern shoreline of the Strait of Georgia in Ferndale, Washington) and replace it with a stronger structure that meets current industry best practices. The activity includes installation of steel piles by vibratory driving, and pile removal using an underwater chainsaw or cutting torch.

In-water pile installation construction will occur for 35 days, which will occur intermittently through approximately October 31, 2024. Take of marine mammals is anticipated to occur due to vibratory pile installation. Removal of all piles is expected to take up to 66 days for underwater pile cutting with a chainsaw. Take of marine mammals is not anticipated to occur due to pile removal.

This IHA is valid for a period of 1 year from the date of issuance. Due to in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, all planned in-water construction in this area is limited to a work window beginning August 1 and ending February 1. However, since the Strait of Georgia is a very large water body with a long fetch, calm in-water work conditions are typically only available from August to the end of October. Pile removal processes are less dependent on good weather, and this portion of the project may occur from approximately August 1 to February 1. Therefore, Phillips 66 expects that in-water pile installation construction work will occur through October 31, 2024. Pile driving is anticipated to take up to 35 days to complete. Work may occur on nonconsecutive days due to weather and other project needs. Pile driving will be completed intermittently throughout daylight hours.

A detailed description of the planned dock maintenance and pile replacement project is provided in the **Federal Register** notice for the proposed IHA (89

FR 53046, June 25, 2024). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS’ proposal to issue an IHA to Phillips 66 was published in the **Federal Register** on June 25, 2024 (89 FR 53046). That notice described, in detail, Phillips 66’s activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day public comment period, NMFS did not receive any public comments.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the

reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS’ Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’ website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which exposure is expected for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’ SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent

the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’ stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’ Alaska and Pacific SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). All species that could potentially occur in the proposed project area are included in table 2 of the IHA application. While the gray whale, minke whale, Dall’s porpoise, and the Eastern North Pacific Northern Resident stock of killer whale have been reported in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided in the **Federal Register** Notice for the proposed IHA (89 FR 53046, June 25, 2024).

TABLE 2—SPECIES FOR WHICH TAKE COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Balaenopteridae (rorquals):</i>						
Humpback Whale ..	<i>Megaptera novaeangliae.</i>	Central America/Southern Mexico—CA/OR/WA.	E, D, Y	1,494 (0.171, 1,284, 2021).	3.5	14.9
Humpback Whale ..	<i>Megaptera novaeangliae.</i>	Mainland Mexico—CA/OR/WA.	T, D, Y	3,477 (0.101, 3,185, 2018).	43	22
Humpback Whale ..	<i>Megaptera novaeangliae.</i>	Hawaii	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i>						
Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Southern Resident.	E, D, Y	73 (N/A, 73, 2022)	0.13	0
Killer Whale	<i>Orcinus orca</i>	West Coast Transient ...	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
<i>Family Phocoenidae (porpoises):</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters.	-, -, N	11,233 (0.37, 8,308, 2015).	66	≥7.2
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i>						
California Sea Lion	<i>Zalophus californianus</i>	U.S.	-,; N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	-,; N	36,308 (N/A, 36,308, 2022).	2,178	93.2
<i>Family Phocidae (earless seals):</i>						

TABLE 2—SPECIES FOR WHICH TAKE COULD OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/Sl ³
Harbor Seal	<i>Phoca vitulina</i>	Washington Northern Inland Waters.	-, -, N	16,451 (0.07, 15,462, 2019).	928	40

¹Information on the classification of marine mammal species follows The Society for Marine Mammalogy's Committee on Taxonomy (<https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>). ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

²NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/Sl often cannot be determined precisely and is in some cases presented as a minimum value or range.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings,

2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for

these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Phillip's 66 dock replacement activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the southeastern shores of the Strait of Georgia, in Puget Sound WA. The notice of proposed IHA (89 FR

53046, June 25, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from vibratory pile driving on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 53046, June 25, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which informs NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities

not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (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 (Level B harassment).

Authorized takes will be by Level B harassment only, as use of the acoustic stressors (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be

behaviorally harassed (equated to Level B harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed by varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous

(e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB (re 1 μ Pa) for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Phillips 66 activity includes the use of continuous sound sources (vibratory driving), and therefore the RMS SPL threshold of 120 dB re 1 μ Pa is applicable.

These thresholds are provided in the table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB.

*Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and TL coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the

project. Marine mammals are expected to be affected via sound generated by the primary components of the project (i.e., vibratory pile driving). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient

R₁ = the distance of the modeled SPL from the driven pile, and

R₂ = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth

or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level B harassment sound thresholds for the method and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory pile installation of 20-in steel piles. Source levels for the pile size and driving method are presented in table 5. The closest representative pile size for reference sound levels was 24-inch piles (WSDOT 2020).

TABLE 5—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Equipment used	Noise level			Distance from measurement
	dB Peak	dB rms	dB SEL (m)	
Vibratory pile driving 24-inch steel piles ¹	181	153	10

¹ Caltrans 2020.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions

included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile

driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used for impact driving in the optional NMFS User Spreadsheet tool, and the resulting estimated isopleths, are reported below in table 6 and table 7 below.

TABLE 6—USER SPREADSHEET INPUTS FOR LEVEL A HARASSMENT ISOPLETHS

Inputs	20-in Steel vibratory installation
Spreadsheet Tab Used	Vibratory Pile Driving (STATIONARY: Non-impulsive, Continuous)
Source Level (Single Strike/shot SEL)
Peak
RMS	153
Weighting Factor Adjustment (kHz)	2.5
Strikes per pile
Piles Per day	16
Propagation (xLogR)	15
Duration	15
Distance of source level measurement (meters) +	10

TABLE 7—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (m) AND ENSONIFIED AREAS [km² in parentheses]

Pile size/type	Level A pinnipeds		Level A cetaceans			Level B
	Harbor seal	Sea lions	LF	MF	HF	
Vibratory Installation						120 dB threshold
20-in steel	3.1 (.003)	<1 (.000)	5 (.005)	<1 (.000)	7.5 (.007)	1585 (1.5)

* The Level A harassment isopleths associated with vibratory installation are all below the minimum shutdown zone and result in very small ensonified areas. Therefore they are not provided in this table but will be included in the following calculated take tables.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. The primary source for density estimates is from the Navy Marine Species Density Database

(NMSDD) Phase III for the Northwest Training and Testing Study Area (Navy, 2019). These density estimates are shown in table 8 and will be used to calculate take due to the lack of site-specific data that is available. To quantitatively assess potential exposure of marine mammals to noise levels from pile driving over the NMFS threshold guidance, the following

equation was first used to provide an estimate of potential exposures within estimated harassment zones:
 Exposure estimate = N × harassment zone (km²) × maximum days of pile driving
 where
 N = density estimate (animals per km²) used for each species.

TABLE 8—MARINE MAMMAL SPECIES DENSITIES USED FOR EXPOSURE CALCULATIONS

Species	Region characterized	Density (Animals/km ²)
Humpback Whale	North Puget Sound/San Juan Islands (Fall and Winter)	0.0027
Killer Whale (Southern Resident)	North Puget Sound/San Juan Islands (Fall and Winter)	0.0078
Killer Whale (Transient)	North Puget Sound/San Juan Islands (Fall and Winter)	0.0031
Harbor Porpoise	North Puget Sound	2.16
Steller Sea Lion	North Puget Sound/San Juan Islands (Fall)	0.0027
California Sea Lion	North Puget Sound/San Juan Islands (Fall)	0.0179
Harbor Seal	North Puget Sound/San Juan Islands (Fall)	0.76

Source: Navy 2019.

Potential Level A harassment zones were all calculated to less than 10 meters. As seen from table 7, marine mammals will have to be very close to the vibratory driving activity to be within the estimated Level A harassment zone. Marine mammal monitors will be in place, closely monitoring this zone and stopping work before any marine mammal gets near the

largest Level A harassment zone of 6.2m from the project source. Based on the estimated Level A harassment zones, and density-based calculations for all species, no take by Level A Harassment was estimated (all less than 1.0). Harbor porpoise is the species with the highest density at 2.16 per km, multiplied by the Level A harassment zone of .007 km (table 7), and 35 days of work yields

0.53 individuals exposed to Level A harassment. Therefore, when considered in context of planned mitigation, no take by Level A harassment is expected. Table 9 below shows the total calculated take by Level B harassment over the 35 in-water work days planned for the Phillips 66 activity resulting in total calculated take.

TABLE 9—CALCULATED AND REQUESTED TAKE BY LEVEL B HARASSMENT FROM VIBRATORY PILE INSTALLATION

35 Days of 20-inch pile installation by vibratory hammer		
Species	Total Level B harassment calculated	Level B harassment proposed for authorization
Harbor Porpoise	447	447
Steller Sea Lion	1	35
California Sea Lion	4	105
Harbor Seal	157	157

Humpback Whale

Humpback whales are an uncommon occurrence near the project area but they do have the potential to be in the

area as they migrate to feeding grounds to the north and mating grounds far south. Based on best available density estimates, Phillips 66 has calculated the

potential take of one humpback whale, by Level B harassment only. However, Phillips 66 proposes to shut down whenever humpback whales approach

the Level B harassment zone. Given the low density of humpback whales in the project area, the ability to detect the whales visually from a considerable distance, the capacity to track whales through the Orca Network, and the anticipated efficacy of mitigation and monitoring measures, Phillips 66 determined that no take of humpback whales is likely to occur and did not request that any such take be authorized. NMFS concurs with this request and, therefore, has not authorized take of humpback whales.

Killer Whales

Both SRKW and transient killer whales could potentially occur near the project area. Based on best available density estimates, Phillips 66 has calculated that up to two SRKWs and one transient whale could be taken, by Level B harassment only. Even though the project site is located in summer core area critical habitat, and the project may begin August 1, the southeastern corner of the Strait of Georgia (where the project is located) is not a location where SRKW are commonly sighted. According to the monthly ORCA network reports of September through October, from 2016–2023, the occurrence of killer whales from any stock was uncommon in the southeastern corner of the Strait of Georgia. When compared to transient killer whales, sightings of SRKWs were far less prevalent (ORCA 2024). Mitigation requires that pile driving activity shut down whenever a killer whale from any stock is observed

approaching a harassment zone. Given the ability to visually detect killer whales from proposed PSO locations (including boats), the capacity to track this species through contact with the ORCA Network, and the expected efficacy of mitigation and monitoring measures, Phillips 66 elected to not request take. Due to the expansive range of SRKWs; the relatively small area of their habitat that may be affected by the project; the ready availability of habitat of similar or higher value, and the short-term nature of installation construction (35 days), Phillips 66 determined that no take of killer whales is likely to occur and did not request that any such take be authorized. NMFS concurs with this request and, therefore, has not authorized take of killer whales.

Steller Sea Lion

Calculated take based upon the species density in the Strait of Georgia yielded one potential take by Level B harassment during the 35 days of in-water pile driving work. While there are no known nearby haulouts, there are haulouts in the greater Strait of Georgia. Phillips 66 determined, based on anecdotal sightings at the facility, that the calculated value was too low. In addition, this species is known to travel significant distances in search for prey, possibly into the surrounding marine waters of the Cherry Point Aquatic Reserve.

NMFS reviewed other IHA monitoring reports from Puget Sound and found that the Seattle Pier 63 construction project (87 FR 31985, May 26, 2022)

reported a maximum of one animal present per day over 17 in-water work days between October 12 and November 30, 2022. Therefore, NMFS assumes a similar rate of occurrence and has authorized 35 (one/day) takes of Steller sea lion by Level B harassment.

California Sea Lion

Calculated take based upon the species density in the Strait of Georgia found 4 potential takes by Level B harassment during the 35 days of pile driving work at the Phillips 66 dock. While there are no known nearby haulouts, there are haulouts in the greater Strait of Georgia. Phillips 66 determined, based on anecdotal sightings at the facility, that the calculated value was too low. In addition, this species is known to travel significant distances in search for prey, possibly into the surrounding marine waters of the Cherry Point Aquatic Reserve.

NMFS reviewed other IHA monitoring reports from Puget Sound and found that the Seattle Pier 63 construction project (87 FR 31985, May 26, 2022) reported a maximum of three California sea lions present per day over 17 in-water work days between October 12 and November 30, 2022. Therefore, NMFS assumes a similar rate of occurrence and has authorized 105 (three/day) takes of California sea lions by Level B Harassment.

Details of takes by Level B harassment as a percentage of stocks are shown in table 10.

TABLE 10—AUTHORIZED TAKE OF MARINE MAMMALS BY LEVEL B HARASSMENT BY SPECIES, STOCK, AND PERCENT OF TAKE BY STOCK

Common name	Stock	Stock abundance	Total authorized take	Authorized take as percentage of stock
Harbor porpoise	Washington Inland Waters	11,233	447	3.97
Steller sea lion	Eastern U.S	36,308	35	0.10
California sea lion	U.S	257,606	105	0.04
Harbor seal	Washington Northern Inland	16,451	157	0.95

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and 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 certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include

information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where

applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if

implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

Pre-start Clearance Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start (discussed below) cannot

proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones, indicated in table 11, are clear of marine mammals. Pile driving may commence following 30 minutes of observation, when the determination is made that the shutdown zones are clear of marine mammals. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Implementation of Shutdown Zones—For all pile driving activities, Phillips 66 would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns would be used to avoid takes by Level A harassment from vibratory pile driving for all four species for which take may occur.

A minimum shutdown zone of 10 m would be required for all in-water construction activities to avoid physical interaction with marine mammals. Proposed shutdown and monitoring zones for each activity type are shown in table 11.

TABLE 11—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL
[m]

Pile size/type	Shutdown zones			Level B harassment monitoring zone
	HF	Phocid	Otariid	
20-in steel Vibratory	10	10	10	1,585

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If one of the four species of marine mammal for which take would be authorized enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted, or a species which has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving activities will be shut down immediately. Activities will not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

Coordination with Local Marine Mammal Research Network—Prior to the start of pile driving for the day the PSOs would contact the Orca Network to find out the location of the nearest sightings of any killer whales or humpback whales. Phillips 66 must delay or halt pile driving activities if any killer whales or humpback whales are sighted within the vicinity of the project area and are approaching the Level B harassment zones (table 11) during in-water activities. Finally, if a SRKW, unidentified killer whale, or humpback whale enters the Level B harassment zone undetected, in-water

pile driving must be suspended immediately upon detection and must not resume until the animal exits the Level B harassment zone or 15 minutes have passed without re-detection of the animal.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that these mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (e.g., age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important

physical components of marine mammal habitat); and,

- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

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

A minimum of two PSOs would be on duty during all in-water pile driving activities. One 'shore-based' observer will be stationed at locations offering best line of sight views to monitor the entirety of the shutdown zones and provide the most complete coverage of the monitoring zones. Additionally, Phillips 66 proposes to deploy one boat-based PSO that will be positioned at a location or moving in a pattern that offers the most complete visual coverage of the monitoring zone. Note, however, PSO position(s) may vary based on construction activity and location of piles or equipment.

PSOs would scan the waters using binoculars and would use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be

placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. Phillips 66 would adhere to the following observer qualifications:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods,

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization,

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization,

(iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization,

(v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and,
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring,
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method, and the total equipment duration or total number of minutes for each pile (vibratory driving),
- PSO locations during marine mammal monitoring,
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance,
- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; and Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching),
- Number of marine mammals detected within the harassment zone, by species,
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Phillips 66 would immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Region regional stranding coordinator. The report will include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Phillips 66 to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Phillips 66 will not be able to resume their activities until notified by NMFS.

In the event that Phillips 66 discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition as described in the next paragraph), Phillips 66 will immediately report the incident to the Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov), NMFS and to the West Coast Region regional stranding coordinator as soon as feasible. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with Phillips 66 to determine whether modifications in the activities are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 9, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level B harassment identified above when these activities are underway.

Take by Level B harassment would be due to potential behavioral disturbance, and TTS. No serious injury or mortality

is anticipated or authorized given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.*, Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. The impact of Level B harassment takes on the affected individuals will be minimized through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. The project site itself is frequented by large tankers every few days, but the majority of sound fields produced by the specified activities are relatively close to the dock. Animals disturbed by project sound will be expected to avoid the area and use nearby higher-quality habitats.

The project also is not expected to have significant adverse effects on affected marine mammals’ habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals’ foraging opportunities in a limited portion of the foraging range; but, because of the intermittent driving schedule (35 in-water work days between August 1 and October 31, 2024); short duration of the activities (no more than 4 hours per day vibratory driving); the relatively small area of the habitat that may be affected; and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not

expected to cause significant or long-term negative consequences.

While there are haulouts for pinnipeds in the area, these locations are some distance from the actual project site. There are two documented California sea lion haulouts in the southern Strait of Georgia, both on the western coast of the Strait in British Columbia. The closest haulout is near Tumbo Island on the eastern edge of the Gulf Island, over 15 miles from the project site. The closest documented Steller sea lion haulout location is over 10 miles from the project site, on Sucia Island (Jeffries *et al.*, 2000). The closest documented harbor seal haulouts are two different low population (>100 individuals) locations approximately 5 miles from the project site, one to the north and one to the south (Jeffries *et al.*, 2000). To the southwest and west of the project location are 14 other haulouts dotted throughout a few of the small northern San Juan Islands (North of Orcas Island) within 10 miles of the project (Jeffries *et al.*, 2000).

While repeated exposures of individuals to this pile driving activity could cause limited Level B harassment in harbor seals, harbor porpoises, and sea lions, they are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The ensoufied area from the project is very small relative to the overall habitat ranges of all species and stocks, and no habitat of particular importance would be impacted;
- Repeated exposures of marine mammals to this pile driving activity could cause Level B harassment in seals, harbor porpoise and sea lion species, but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stocks as a whole; and
- The mitigation measures are expected to reduce the effects of the specified activity by minimizing the

intensity and/or duration of harassment events.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 8 demonstrates the number of instances in which individuals of a given species could be exposed to received noise levels that could cause take of marine mammals. Our analysis shows that the total taking authorized is less than 4 percent of the best available population abundance estimate for all species.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken, relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

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

National Environmental Policy Act

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

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

Authorization

NMFS has issued an IHA to Phillips 66 for the potential harassment of small numbers of 4 marine mammal species incidental to the Ferndale Refinery Dock Replacement in-water pile driving activities in Ferndale Washington, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: August 9, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,
National Marine Fisheries Service.

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