

(FONSI) was signed on September 4, 2024. Copies of the EA and FONSI are available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas>.

#### Authorization

NMFS has issued an IHA to Hilcorp for the potential harassment of small numbers of 12 marine mammal species incidental to Hilcorp's use of tugs to tow, hold, and position a jack-up rig in support of their oil and gas activities in Cook Inlet, Alaska from September 24, 2024 through September 23, 2025, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: September 24, 2024.

**Kimberly Damon-Randall,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XE225]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Army Corps of Engineers Baker Bay Pile Dike Repair Project

**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 the Army Corps of Engineers (ACOE) to incidentally harass marine mammals during construction activities associated with the Baker Bay pile dike repair project in Baker Bay, Oregon. There are no changes from the proposed authorization in this final authorization.

**DATES:** This authorization is effective from August 1, 2025 to July 31, 2026.

**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-army->

*corps-engineers-baker-bay-pile-dike-repair-project-baker*. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Craig Cockrell, 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 September 8, 2022, NMFS received a request from the ACOE for an IHA to take marine mammals incidental to pile driving and removal at the mouth of the Columbia River in Oregon. Following NMFS' review of the application, the ACOE submitted two revised versions on March 4, 2024 and May 1, 2024. The application was deemed adequate and complete on June 10, 2024. The ACOE's request is for take of eight species of marine mammals by Level B harassment and, for harbor seal (*Phoca vitulina*), Level A harassment. Neither ACOE nor NMFS expect serious injury or mortality to result from this

activity and, therefore, an IHA is appropriate.

##### Description of Activity

ACOE is planning to conduct pile dike repairs in the Baker Bay system, located in the Columbia River estuary. There are a variety of activities that will occur during this project. Take of marine mammals is expected to occur only during the construction of the material offload facility and the installation of the marker piles. Vibratory and impact pile driving will introduce underwater sounds that may result in take, by Level A and Level B harassment, of marine mammals. It is expected to take up to 12 non-consecutive days to complete the pile driving activities from August through October.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (89 FR 60385, July 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 the ACOE was published in the **Federal Register** on July 25, 2024 (89 FR 60385). That notice described, in detail, the ACOE'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 1 lists all species or stocks for which take is expected and authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endanger Species Act (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 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' U.S. Pacific SARs. All values presented in table 1 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-assessments>.

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES <sup>1</sup>

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) <sup>2</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>3</sup>	PBR	Annual M/SI <sup>4</sup>
<b>Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)</b>						
<i>Family Eschrichtiidae (baleen whale):</i>						
Gray Whale .....	<i>Eschrichtius robustus</i> .....	Eastern N Pacific .....	- , - , N	26,960 (0.05, 25,849, 2016) ..	801	131
<i>Family Balaenopteridae (rorquals)</i>						
Humpback whale .....	<i>Megaptera novaeangliae</i> .....	Central America/Southern Mexico—CA/OR/WA. Mainland Mexico—CA/OR/WA	E, D, Y T, D, Y	1,494 (0.171, 1,284, 2021) .... 3,477 (0.101, 3,185, 2018) ....	3.5 43	14.9 22
<b>Odontoceti (toothed whales, dolphins, and porpoises)</b>						
<i>Family Delphinidae:</i>						
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> .....	Northern OR/WA Coast .....	- , - , N	22,074 (0.391, 16,068, 2022)	161	3.2
<b>Order Carnivora—Pinnipedia</b>						
<i>Family Otariidae (eared seals and sea lions):</i>						
Steller sea lion .....	<i>Eumetopias jubatus</i> .....	Eastern DPS .....	- , - , N	36,308 (N/A, 36,308, 2022) ...	2,178	93.2
California sea lion .....	<i>Zalophus californianus</i> .....	U.S .....	- , - , N	257,606 (N/A, 233,515, 2014)	14,011	>321
<i>Family Phocidae (earless seals):</i>						
Harbor seal .....	<i>Phoca vitulina</i> .....	OR/WA Coastal .....	- , - , N	UNK (UNK, UNK, 1999) .....	UND	10.6
Northern elephant seal .....	<i>Mirounga angustirostris</i> .....	CA Breeding .....	- , - , N	187,386 (N/A, 85,369, 2013)	5,122	13.7

<sup>1</sup> Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy.

<sup>2</sup> Endangered Species Act (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.

<sup>3</sup> NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable.

<sup>4</sup> These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

A detailed description of the species likely to be affected by the Baker Bay pile dike project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 60385, July 25, 2024); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed

descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

*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.*). 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 2.

TABLE 2—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 the ACOE's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (89 FR 60385, July 25, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the ACOE's construction 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 60385, July 25, 2024).

**Estimated Take of Marine Mammals**

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform 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 primarily be by Level B harassment, as use of the construction equipment (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) of phocids because predicted auditory injury zones are larger than for other species. 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 to be 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 would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

*Level B Harassment*—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to 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 μPa)) for continuous (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa 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 Temporary Threshold Shift (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 will not otherwise occur.

The ACOE's construction includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are applicable.

*Level A Harassment*—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different

marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The ACOE's construction includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table 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 3—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 μPa, and cumulative sound exposure level ( $L_E$ ) has a reference value of 1 μPa<sup>2</sup>s. 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 transmission loss 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., impact pile driving and vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 20.72 km<sup>2</sup> (12.87 mi<sup>2</sup>), and will consist of most of the mouth of the Columbia River immediately south of West Sand Island (See figure 1 in the proposed IHA 89 FR 60385, July 25, 2024). Additionally, vessel traffic in the project area may contribute to elevated

background noise levels which may mask sounds produced by the project.

Transmission loss (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:

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

where

TL = transmission loss in dB

B = transmission loss coefficient

R<sub>1</sub> = the distance of the modeled SPL from the driven pile, and

R<sub>2</sub> = 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 will 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 A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, the applicant and 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 and impact pile installation of steel pipe and sheet piles and vibratory removal of steel sheet piles. Source levels for 24-in steel pipe piles are used as a proxy for all steel piles that may be placed for marker piles of the dike system, though smaller piles may be used during the

construction. NMFS consulted multiple sources to determine valid proxy source levels for the impact installation of sheet piles, as indicated in table 4. This is the best available data for sheet pile source levels and is based on 24-in sheet piles used for a project in California. Source levels for each pile size and driving method are presented in table 4.

TABLE 4—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile size	Method	Proxy source level (at 10 m)			Literature source
		dB RMS re 1µPa	dB SEL re 1µPa²sec	dB peak re 1µPa	
24-in .....	Vibratory .....	154	N/A	N/A	Navy 2015.
24-in sheet pile .....	Vibratory .....	160	N/A	N/A	Caltrans 2020.
24-in .....	Impact .....	189	178	203	Caltrans 2015.

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, 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 in the optional User Spreadsheet tool are reported below (table 5). The resulting estimated Level A harassment isopleths and the Level B harassment isopleths are reported in table 6.

TABLE 5—USER SPREADSHEET INPUTS FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of strikes per pile	Number of piles per day	Activity duration (minutes)
24-in vibratory installation (MOF Option 2).	A.1 Vibratory pile driving .....	2.5	N/A	8	20
24-in vibratory removal (MOF Option 2)	A.1 Vibratory pile driving .....	2.5	N/A	16	5
24-in sheet pile vibratory installation (MOF Option 1).	A.1 Vibratory pile driving .....	2.5	N/A	25	15
24-in sheet pile vibratory removal (MOF Option 1).	A.1 Vibratory pile driving .....	2.5	N/A	60	3
24-in vibratory installation (Pile Markers).	A.1 Vibratory pile driving .....	2.5	N/A	8	15
24-in impact installation (Pile Markers)	E.1 Impact pile driving .....	2	225	5	N/A

TABLE 6—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)					Level B harassment zone (m)
	LF-cetaceans	MF-cetaceans	HF-cetaceans	Phocids	Otariids	
24-in Steel Pipe Pile Vibratory Install (MOF Option 2) .....	4.5	0.4	6.6	2.7	0.2	1,847.8
24-in Steel Pipe Pile Vibratory Removal (MOF Option 2) .....	2.8	0.3	4.2	1.7	0.1	
24-in sheet pile vibratory installation (MOF Option 1) .....	23.4	2.1	34.6	14.2	1.0	4,641.1
24-in sheet pile vibratory removal (MOF Option 1) .....	12.2	1.1	18	7.4	0.5	
24-in vibratory installation (Pile Markers) .....	3.7	0.3	5.5	2.3	0.2	1,847.8
24-in impact installation (Pile Markers) .....	501.4	17.8	597.2	268.3	19.5	857.7

### 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. We describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized.

When available, peer-reviewed scientific publications were used to estimate marine mammal abundance in the project area. Data from monitoring reports from the previous Sand Island Test Pile Project was used to calculate take for several species. However, scientific surveys and resulting data, such as population estimates, densities, and other quantitative information, are lacking for some species. The ACOE also gathered qualitative information from discussions with knowledgeable local people that frequent the mouth of the Columbia River. Assumptions regarding the size of expected groups of different species, and the frequency of occurrence of those groups, were made by the ACOE on the basis of the aforementioned information and are described for each species below.

Since reliable densities are not available, the take numbers are based on the assumed occurrence of a given stock during the activity. The applicant used equation 1, below, to estimate take of killer whales and Steller sea lions, equation 2 to estimate take of humpback whale, harbor porpoise, California sea lions, and harbor seals, and neither equation for gray whale or Northern elephant seals. NMFS concurs with this method. The estimated take calculation for these/this species is explained in the relevant section below.

- (1) Estimated Take = number of individuals in a group  $\times$  groups per day  $\times$  days of pile-related activity
- (2) Estimated Take = total expected duration of the project (minutes)  $\div$  total duration of the Sand Island Test Pile Project  $\times$  the total number of animals of a given species observed during the Sand Island Test Pile Project

#### Gray Whale

Historically gray whales have not frequented the mouth of the Columbia River. No gray whales were observed during monitoring activities of the Sand Island Test Pile Project (Hamer Environment L.P. 2020). In August of 2020, an ACOE biologist observed two gray whales traveling upriver from the project site. Given this recent sighting and the temporal overlap of the project

and the most recent sighting, NMFS authorized two takes of gray whales by Level B harassment.

The largest Level A harassment zone for gray whales extends 513 m from the noise source (table 6). ACOE is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Therefore, especially in combination with the already low occurrence of gray whales in the area, implementation of the shutdown zones is expected to eliminate the potential for take by Level A harassment of gray whale. Therefore, no take by Level A harassment is anticipated or authorized for humpback whales.

#### Humpback Whales

Humpback whales have occurred in the lower Columbia River near the project area in recent years. Feeding groups have been using the mouth of the Columbia River as a foraging ground, arriving as early as mid-June, and have been observed as late as mid-November with a peak of abundance coinciding with the peak abundance of forage fish in mid-summer (The Columbian 2019). During pile driving activities of the Sand Island Test Pile Project, seven animals were observed (Hamer Environment L.P. 2020). The ACOE estimated take of humpback whales using equation 2 above resulting in a take estimate of 16 takes by Level B harassment (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project)  $\times$  7 observed animals). NMFS agrees with this approach and estimated take. As described above, NMFS anticipates that 42 percent of takes will occur to individuals of the Central America/Southern Mexico-CA/OR/WA stock and 58 percent of takes will occur to individuals of the Mainland Mexico-CA/OR/WA which will equate to seven and nine takes respectively.

The largest Level A harassment zone for humpback whales extends 513 m from the noise source (table 6). ACOE is planning to implement shutdown zones for low-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Implementation of the shutdown zones is expected to eliminate the potential for take by Level A harassment of humpback whale. No take by Level A harassment is anticipated or authorized for humpback whales.

#### Killer Whale

Use of the mouth of the Columbia River is rare for killer whales, but in recent years pods of killer whales have been observed in and around the mouth

of the Columbia River. During the recent monitoring of the Sand Island Test Pile Project, no killer whales were observed (Hamer Environment L.P. 2020). Aerial seabird marine mammal surveys observed 0 killer whales in January 2011, 0 in February 2012, and 10 in September 2012 within an approximately 1,500 km<sup>2</sup> range near the Mouth of the Columbia River (Adams 2014). A pod of transient killer whales was detected near the Astoria Bridge in May of 2018 (Frankowicz 2018) and in 2022 (Tomlinson 2022). The ACOE estimated the average group sizes from these past observations was seven. Based on the rare occurrence of killer whales in the project area, ACOE expects that one group of seven killer whales may occur during the 12 days of construction in the Level B harassment zone. NMFS concurs and authorized seven takes of killer whale by Level B harassment.

The largest Level A harassment zone for killer whales extends 17.8 m from the noise source (table 6). ACOE is planning to implement shutdown zones for mid-frequency cetaceans that exceed the Level A harassment isopleth for all activities. Implementation of the shutdown zones is expected to eliminate the potential for take by Level A harassment of killer whale. No take by Level A harassment is anticipated or authorized for killer whales.

#### Harbor Porpoise

Harbor porpoises are regularly observed in the offshore waters near the mouth of the Columbia River and are known to occur there year-round. Porpoise abundance peaks when anchovy (*Engraulis mordax*) abundance in the river and nearshore are highest, which is usually between April and August (Litz *et al.* 2008). Harbor porpoise tend to occur in groups of one to two individuals. During the recent monitoring of the Sand Island Test Pile Project, eight harbor porpoise were observed during construction activities (Hamer Environment L.P. 2020). Using equation 2 above, ACOE expects that 18 takes by Level B harassment will occur over the 12 days of pile driving (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project)  $\times$  8 observed animals). NMFS agrees with this approach and authorized 18 takes by Level B harassment of harbor porpoise.

The largest Level A harassment zone for harbor porpoise extends 597 m from the noise source (table 6). ACOE is planning to implement shutdown zones for high-frequency cetaceans that exceed the Level A harassment isopleth for all activities, and it did not request take by

Level A harassment of harbor porpoise. For some activities (*i.e.*, impact driving of 24-in piles), the shutdown zones extends farther than Protected Species Observers (PSO) may be able to reliably detect harbor porpoise. However, given the portion of the zone within which PSOs could reliably detect a harbor porpoise, the infrequency of harbor porpoise observations during the Sand Island Test Pile project monitoring, and harbor porpoise sensitivity to noise, no take by Level A harassment is anticipated or authorized for harbor porpoise.

**Steller Sea Lion**

Steller sea lion occurrence was estimated using Washington Department of Fish and Wildlife haulout survey data from the South Jetty at the mouth of the Columbia River from 2000 to 2014. During the recent monitoring of the Sand Island Test Pile Project no Steller sea lions were observed (Hamer Environment L.P. 2020). Given the close proximity of the haulout, NMFS expects that Steller sea lions could occur near the project site. Occurrence was estimated using the monthly haulout numbers for the months when work will be occurring during the project. In August, the average number of Steller sea lions hauled out at the jetty was 72, and in October, the average number of sea lions at the jetty was 77. In August, construction will occur over 7-days, and in October, construction will occur over 5 days. Given the daily occurrence rates and days of in-water construction, and using equation 1, the ACOE expects that 889 takes by Level B harassment will occur (daily occurrence (72 or 77) × days of activity), and NMFS authorized 889 takes by Level B harassment of Steller sea lion.

The largest Level A harassment zone for Steller sea lions extends 19.5 m from the noise source (table 6). ACOE is planning to implement shutdown zones for otariids that exceed the Level A harassment isopleth for all activities. Implementation of the shutdown zones is expected to eliminate the potential for

take by Level A harassment of Steller sea lion. No take by Level A harassment is anticipated or authorized for Steller sea lion.

**California Sea Lion**

Similar to Steller sea lions, California sea lions use the South Jetty at the mouth of the Columbia River and make frequent trips inside the mouth of the river. Occurrence on the South Jetty peaks in summer and use in the fall and winter is more concentrated. During recent monitoring activities of the Sand Island Test Pile Project 59 animals were observed (Hamer Environment L.P. 2020). Using equation 2 above, ACOE expects that 144 takes by Level B harassment California sea lions will occur (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project) × 59 observed animals), and NMFS authorized 144 takes by Level B harassment of California sea lion.

The largest Level A harassment zone for California sea lions extends 19.5 m from the noise source (table 6). ACOE is planning to implement shutdown zones for otariids that exceed the Level A harassment isopleth for all activities. Implementation of the shutdown zones is expected to eliminate the potential for take by Level A harassment of California sea lion. No take by Level A harassment is anticipated or authorized for California sea lion.

**Harbor Seal**

Harbor seals are the most abundant pinniped in Oregon and occur in the project area. Large numbers of harbor seals move through the mouth of the Columbia River throughout the year and are expected to be present in the project area. During recent monitoring of the Sand Island Test Pile Project, a total of 309 harbor seals were observed during construction activities (Hamer Environment L.P. 2020). Take estimates were generated using equation 2 above and the Sand Island Pile Test Project monitoring results. ACOE expects that 679 takes by Level B harassment of

harbor seals will occur during the project (2277 (pile driving minutes for this activity)/1037 (pile driving minutes for Sand Island Test Pile Project) × 309 observed animals), and NMFS authorized 679 takes by Level B harassment of harbor seal.

The Level A harassment zone for harbor seals during impact installation is 268 m (table 6). ACOE will implement a shutdown zone of 150 m given the difficulty of observing harbor seals at greater distances and practicability concerns regarding efficient work production rates that will be associated with a larger shutdown zone (see Mitigation section). During impact installation ACOE expects that two harbor seals could be present in the Level A harassment zone. Therefore, over the 3 days of impact pile driving, NMFS anticipates, and authorized, six takes by Level A harassment (two takes per day \* 3 days = six takes by Level B harassment).

**Northern Elephant Seal**

Northern elephant seals occur infrequently in the mouth of the Columbia River. Recent sightings of elephant seals have occurred in the fall and spring upriver from the project site. Although, no Northern elephant seals were observed during the Sand Island Test Pile Project (Hamer Environment L.P. 2020). ACOE expects that two animals may be present in the Level B harassment zone during the 12-days of construction, and NMFS authorized two takes by Level B harassment of elephant seal.

The largest Level A harassment zone for Northern elephant seals extends 268 m from the noise source (table 6). ACOE is planning to implement shutdown zones for Northern elephant seal that exceed the Level A harassment isopleth for all activities. Implementation of the shutdown zones is expected to eliminate the potential for take by Level A harassment of Northern elephant seal. No take by Level A harassment is anticipated or authorized for Northern elephant seals.

TABLE 7—AUTHORIZED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance <sup>a</sup>	Level A	Level B	Total take	Take as a percentage
Gray Whale .....	Eastern N Pacific .....	26,960	0	2	2	<1
Humpback Whale .....	Central America/Southern Mexico-CA/OR/WA. Mainland Mexico-CA/OR/WA .....	1,494 3,477	0 0	7 9	7 9	<1 <1
Killer Whale .....	West Coast Transients .....	349	0	7	7	2
Harbor Porpoise .....	Northern OR/WA Coast .....	22,074	0	18	18	<1
Steller sea lion .....	Eastern .....	36,308	0	889	889	2.4
California Sea Lion .....	United States .....	257,074	0	144	144	<1
Harbor Seal .....	OR/WA Coastal .....	UKN	6	679	685	N/A

TABLE 7—AUTHORIZED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK—Continued

Common name	Stock	Stock abundance <sup>a</sup>	Level A	Level B	Total take	Take as a percentage
Northern Elephant Seal .....	CA Breeding .....	187,386	0	2	2	<1

<sup>a</sup>Stock size is best estimate of population (Nbest) according to NMFS 2022 Final Stock Assessment Reports and where appropriate the draft NMFS 2022 Final Stock Assessment Reports was used to estimate Nbest.

**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. 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.

ACOE is required to implement the following mitigation measures:

*Implementation of Shutdown Zones—* For all pile driving/removal activities, the ACOE will implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns will be used to minimize the number and

severity of takes from vibratory and impact pile driving and removal (table 8). For all pile driving/removal activities, a minimum 25-m shutdown zone will be established for pinnipeds and 50-m shutdown zone for cetaceans as outlined in the ACOE application for an IHA. For harbor seals, ACOE will implement a shutdown zone of 25 m given its concerns about potential frequent shutdowns that may occur with a larger shutdown zone in consideration of high occurrence of harbor seals in the project area. To minimize the potential of Level A harassment of harbor seals, NMFS recommended a shutdown zone of 150 m for harbor seals. ACOE concurred that this zone was practicable, and therefore, NMFS required a shutdown zone of 150 m for harbor seals. Shutdown zones for impact pile driving are based on the Level A harassment zones and therefore vary by marine mammal hearing group (table 8). The placement of PSOs during all pile driving activities (described in detail in the Monitoring and Reporting section) will ensure the full extent of shutdown zones are visible to PSOs.

TABLE 8—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Pile size	Shutdown zones (m)					
		LF cetaceans	MF cetaceans	HF cetaceans	Harbor seals	Northern elephant seal	Otariids
Vibratory Installation .....	24-in (pile markers) .....	50	50	50	25	25	25
Vibratory Installation and removal .....	24-in (MOF option 2) .....	50	50	50	25	25	25
Vibratory Installation and removal .....	24-in sheet pile (MOF option 1) .....	50	50	50	25	25	25
Impact Installation .....	24-in (pile markers) .....	510	50	600	150	270	25

*Monitoring for Level A and Level B Harassment—*The ACOE has identified monitoring zones correlated with the Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. PSOs will monitor the entire visible area to maintain the best sense of where animals are moving

relative to the zone boundaries defined in table 8. Placement of PSOs on the shorelines around Sand Island will allow PSOs to observe marine mammals near the project area. While not required by this IHA, ACOE states that it may also place a PSO on a skiff near the project area if safe conditions allow.

*Soft Start—*Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes

at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

*Pre-Activity 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 will observe the shutdown and monitoring zones for a period of 30



minutes. The shutdown zone will 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 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 9, are clear of marine mammals. When a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities may begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone will commence.

Based on our evaluation of the applicant's measures, NMFS has determined that the 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 in accordance with section 5 of the IHA. 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 will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal 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 or removed. Pile driving/removal 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 PSO will be on duty during all in-water construction activities. Locations from which PSOs will be able to monitor for marine mammals are readily available from the shore of Sand Island. PSOs will monitor for marine mammals entering the harassment zones.

PSOs will scan the waters using binoculars or spotting scopes and will use a handheld range-finder device to verify the distance to each sighting from the project site. PSOs will 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.

The ACOE will 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; and

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

Additional recommended 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 will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will 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 (*i.e.*, impact driving) and for each pile or total number of strikes for each pile (impact 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; 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 zones, 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 event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS and to the West Coast regional stranding network as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

- Species identification (if known) or description of the animal(s) involved;

- Condition of the animal(s) (including carcass condition if the animal is dead);

- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and

- General circumstances under which the animal was discovered.

#### 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 7, 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 and removal 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 A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment will be due to potential behavioral disturbance, TTS, and PTS. 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. Take by Level A harassment is only anticipated for harbor seals. The potential for

harassment is minimized through the construction method (*i.e.*, use of direct pull removal or vibratory methods to the extent practical) and the implementation of the mitigation measures (see Mitigation section).

Behavioral responses of marine mammals to pile driving and removal at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the limited number of piles to be installed or extracted per day and that pile driving and removal will occur across a maximum of 12 days within the 12-month authorization period, any harassment will be temporary.

In addition to the expected effects resulting from Level B harassment, we anticipate that harbor seals may sustain some limited Level A harassment in the form of PTS. However, any PTS is expected to be of a small degree (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving (below 2 kHz)) because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics, as it would be minor and not in the region of greatest hearing sensitivity.

Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

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 short duration of the activities, 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.

A large portion of the west coast, including the mouth of the Columbia River, has been identified as a biologically important area (BIA) for gray whale feeding (Calambokidis *et al.* 2024). As described above, the presence of gray whales in the project area is rare, and the area of overlap of the project with the feeding BIA affected is small compared to the overall size of the BIA. The gray whale feeding BIA is active from June through November while the project is scheduled to occur between August and October, resulting in only three months of overlap with the project and 3 months when the BIA is active but ACOE will not be conducting work. Additionally, pile driving associated with the project is expected to take only 12 days, further reducing the temporal overlap with the BIA. Therefore, take of gray whales using this feeding BIA, given both the small footprint of the activity relative to the BIA, and the scope and nature of the anticipated impacts of pile driving exposure, is not anticipated to impact the reproduction or survival of any 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;
- Any take by Level A harassment (harbor seals, only) is anticipated to result in slight PTS within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment will consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all stocks, and does not overlap ESA-designated critical habitat. While impacts will occur within an area that is important for gray whale feeding, because of the small footprint of the activity relative to the feeding area, the limited temporal overlap of the activity and the feeding period, and the scope and nature of the anticipated impacts of pile driving exposure, we do not expect impacts to the reproduction or survival of any individuals; and

- ACOE will implement mitigation measures, such as soft-starts for impact pile driving and shut downs, to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment, is at most, a small degree of PTS.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the 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 7 demonstrates the number of animals that NMFS anticipates could be taken by Level A and Level B harassment for the work. Our analysis shows that at most 2.4 percent of each affected stock could be taken by harassment. The numbers of animals to be taken for these stocks will be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual, which is an unlikely scenario.

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 will be taken relative to the population size of the affected species or stocks.

### Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (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, in this case with the West Coast Regional Office.

Two DPSs of humpback whale (Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA) occur in the project area and are listed as endangered and threatened, respectively, under the ESA. The NMFS West Coast Regional OPR Division issued a Biological Opinion on September 11, 2025 under section 7 of the ESA, on the issuance of an IHA to the ACOE under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of Central America/Southern Mexico-CA/OR/WA and Mainland Mexico-CA/OR/WA humpback whales and is not likely to destroy or adversely modify their critical habitat.

### 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 evaluate our proposed action the issuance of an IHA and alternatives with respect to potential impacts on the human environment.

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

### Authorization

NMFS has issued an IHA to the ACOE for the potential harassment of small numbers of eight marine mammal species incidental to the pile dike repair project in Baker Bay, Oregon, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: September 25, 2024.

**Kimberly Damon-Randall,**

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

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Publishing the new 12-month cap on duty- and quota-free benefits.

**DATES:** The new limitations become applicable October 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Thomas Newberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)-482-7578.

#### SUPPLEMENTARY INFORMATION:

*Authority:* Title I, section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106-200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Public Law 107-210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Public Law 108-274; Division D, title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Public Law 109-432, and section 1 of The African Growth and Opportunity Amendments (Public Law 112-163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and title I, section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, Public Law 114-27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is

also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114-27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the 12-month period beginning October 1, 2024 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2024, and extending through September 30, 2025, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,757,888,503 square meters equivalent. Of this amount, 878,944,252 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Tyler Beckelman,**

*Chairman, Committee for the Implementation of Textile Agreements.*

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