



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RTID 0648-XR077**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Gustavus Ferry Terminal Improvements Project.**

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

**ACTION:** Notice; proposed issuance of an Incidental Harassment Authorization; request for comments on proposed authorization and possible renewal.

**SUMMARY:** NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for authorization to take marine mammals incidental to pile driving and construction associated with the Gustavus Ferry Terminal Improvements Project in Gustavus, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations, and agency responses will be summarized in the final notice of our decision.

**DATES:** Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online *at*

*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401. 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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. In case of problems accessing these documents, please call the contact listed above.

## **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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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 such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

### **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 incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 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 preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

### **History of Request**

On November 20, 2019, NMFS received a request from the ADOT&PF for an IHA to take marine mammals incidental to in-water construction in Gustavus, Alaska. NMFS previously issued an IHA to ADOT&PF to incidentally take seven species of marine mammal, by Level A and Level B harassment, during construction activities associated with the Gustavus Ferry Terminal Improvements project. The IHA, issued on April 4, 2017 (82 FR 17209; April 10, 2017), had effective dates of December 15, 2017 through December 14, 2018. However, ADOT&PF was unable to conduct any of the work and, therefore, requested a new IHA. NMFS issued a second IHA with effective dates of December 15, 2018 through December 14, 2019 (83 FR 55348; November 11,

2018) to cover the incidental take analyzed and authorized in the first IHA. There were minor modifications to the number of piles driven but these had no effect on authorized take numbers, monitoring requirement, or reporting measures, which remained the same as stated in the original 2017-2018 IHA.

ADOT&PF was unable to meet the fall pile driving window (September 1 through November 30, 2019) as originally anticipated. Due to this setback, construction is planned to begin in spring 2020. ADOT&PF submitted an addendum to the original application requesting that a supplementary two-week timeframe be included in the spring window from February 15 through May 31, 2020. During this two-week timeframe, the contractor would begin vibratory removal of structures in order to get ahead of schedule while also accommodating for one last sailing of the ferry to the community before the ferry terminal's closure for the remainder of construction. The only difference between this proposed and previously issued IHAs is a construction start date of February 15 instead of March 1. The proposed IHA would be effective from February 15, 2020 through February 14, 2021. Take numbers would be the same as authorized previously, and the mitigation, monitoring, and reporting requirements would remain the same as authorized for the 2018-2019 IHA referenced above. The specified activities are expected to result in the take of seven species of marine mammals including harbor seal (*Phoca vitulina*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*).

### *Description of the Proposed Activity and Anticipated Impacts*

The proposed 2020-2021 IHA would cover the same construction associated with the modernization of the Gustavus Ferry Terminal as described in the 2017-2018 and 2018-2019 IHAs. NMFS refers the reader to the documents related to the previously issued IHAs for more detailed description of the project activities. These previous documents include the **Federal Register** notice of the issuance of the 2018-2019 IHA (83 FR 55348; November 11, 2018) for the Gustavus Ferry Terminal Improvements project; the **Federal Register** notice of the issuance of the 2017-2018 IHA (82 FR 17209; April 10, 2017); ADOT&PF's application; the addendum from ADOT&PF dated November 20, 2019; and all associated references and documents, which may be found at:

*<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>*. A detailed description of the proposed vibratory and impact pile driving activities at the ferry terminal improvements project is found in these documents. These descriptions remain accurate with the exception of moving up the construction start date by two weeks to February 15, 2020 during the spring work window instead of starting on March 1, 2020.

### *Detailed Description of the Action*

Differences between the issued 2017-2018 IHA and the issued 2018-2019 IHA are shown in Table 1, for historical reference, but the proposed 2020-2021 IHA would be identical to the 2018-2019 IHA. Because the fullest detailed description of the activity was included in the materials describing the 2017-2018 IHA, we highlight the difference between the current 2020-2021 IHA and that one. Pile driving and removal would occur over the same number of days (50) with installation and removal of 16 additional piles

over 21 additional hours. These changes represent a 3.5 percent increase in the number of piles installed and a 21.9 percent increase in the number of piles removed. The duration of impact driving would remain the same while the time spent vibratory driving would increase by 18.4 percent. The additional time required for vibratory driving is due to the increase in anticipated number of piles removed. Note that these proposed changes would have a nominal impact on the calculated Level A harassment isopleths and no effect on Level B harassment isopleths. Therefore, the sizes of the Level A harassment and Level B harassment zones would remain unchanged.

**Table 1. Gustavus Ferry Pile Installation and Removal Summary.**

<b>Pile size (Inches)</b>	<b># of piles – 2017-2018 IHA</b>	<b># of piles – 2018-2019 and 2020-2021 Proposed IHA</b>
30	14	18
24	40	34 install/12 remove
18	0	4 remove
16	0	4 install/4 remove
12.75	3 install/16 remove	3 install/9 remove
Total installed/total Piles	57/73	59/89
<b>Driving Time Duration</b>	<b>2017-2018 IHA (hours)</b>	<b>2018-2019 Proposed IHA (hours)</b>
Impact Driving	57	57
Vibratory Driving	114	135
Total	171	192

*Description of Marine Mammals*

Marine mammals expected to occur near the project area are shown in Table 2. A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to the proposed 2020-2021 IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the 2017-2018 IHA.

**Table 2. Marine Mammals Occurrence in the Project Area.**

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
Order Cetartiodactyla – Cetacea – Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Minke Whale	<i>Balaenoptera acutorostrata</i>	Alaska	-, -, N	N/A (see SAR, N/A, see SAR)	UND	0
Humpback Whale	<i>Megaptera novaeangliae</i>	Central N Pacific (Hawaii and Mexico DPS)	-, -, Y	10,103 (0.3, 7,891, 2006) (Hawaii DPS 9,487 <sup>a</sup> Mexico DPS 606 <sup>a</sup> )	83	25*
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Killer Whale	<i>Orcinus orca</i>	Gulf of Alaska Transient	-, -, N	587 c (N/A, 587, 2012)	5.9	1
		Northern Resident	-, -, N	302 c (N/A, 302, 2018)*	2.2*	0.2*
		West Coast Transient	-, -, N	243 c (N/A, 243, 2009)	2.4	0
Family Phocoenidae (porpoises)						
Dall's Porpoise	<i>Phocoenoides dalli</i>	AK	-, -, N	83,400 (0.097, N/A, 1991)	UND	38
Harbor Porpoise	<i>Phocoena phocoena</i>	Southeast Alaska	-, -, Y	see SAR (see SAR, see SAR, 2012)	See SAR*	34
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller Sea Lion	<i>Eumetopias jubatus</i>	Western DPS	E, D, Y	53,624 (see SAR, 53,624, 2018)*	322*	247
		Eastern DPS	T, D, Y	43,201 (see SAR, 43,201, 2017)*	2,592*	113*
Family Phocidae (earless seals)						
Harbor Seal	<i>Phoca vitulina</i>	Glacier Bay/Icy Strait	-, -, N	7,455 (see SAR, 6,680, 2017)*	120*	104

1 - 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.

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2- NMFS marine mammal stock assessment reports online at: [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/). CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]

3 - 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.

NOTE - Italicized species are not expected to be taken or proposed for authorization

<sup>a</sup> Under the MMPA humpback whales are considered a single stock (Central North Pacific); however, we have divided them here to account for distinct population segments (DPSs) listed under the ESA. Using the stock assessment from Muto et al. 2019 for the Central North Pacific stock (10,103) and calculations in Wade et al. 2016, 93.9% of the humpback whales in Southeast Alaska are expected to be from the Hawaii DPS and 6.1% are expected to be from the Mexico DPS.

\* -Updated information from Muto *et al.* 2019. Draft Alaska Marine Mammal Stock Assessments, 2019. Available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>.

### *Potential Effects on Marine Mammals*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in these previous documents, which remains applicable to the issuance of the proposed 2020-2021 IHA. There is no new information on potential effects.

### *Estimated Take*

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the proposed 2020-2021 IHA are identical to those used in the 2017-2018 IHA. The source levels also remain unchanged from the previously issued IHAs. Observational data was used to calculate daily take rates in the absence of density data. Since the number of pile-driving days (50) planned for the 2017-2018 IHA, 2018-2019 IHA and proposed 2020-2021 IHA are the same, the total estimated take projections will be identical. Additionally, marine mammal occurrences are more frequent in the late spring near the Gustavus ferry terminal. Moving the start date forward by two weeks would reduce the amount of in-water construction occurring later in the spring when animal occurrences are elevated. Therefore, the total recorded take amounts may be reduced. Note that since abundance estimates of some stocks have been updated in the Draft 2019 SAR (Muto *et al.* 2019) the

percentage of stock taken has also changed. These changes are shown in Table 3.

**Table 3. Estimated Number of Instances of Exposures that May Be Subject to Level A and Level B Harassment and Percentage of Stocks.**

Species	Level A Authorized Takes	Level B Authorized Takes	Total Proposed Authorized Takes	Stock(s) Abundance Estimate	Instances of Take as a Percentage of Total Stock
Steller Sea Lion	0	709	709	53,624 (western distinct population segment in Alaska)/ 43,201 (eastern stock)	1.3*/ 1.6*
Humpback whale	0	600/ (36 <sup>1</sup> )	600/ (36 <sup>1</sup> )	10,103 (Central North Pacific Stock)/3,264 (Mexico DPS)	5.9/1.1
Harbor Seal	38	616	654	7,455 (Glacier Bay/Icy Strait)	8.7*
Harbor Porpoise	26	127	153	11,146 (Southeast Alaska)	1.37
Killer whale	0	126	126	302 (Northern resident)/ 587 (Gulf of Alaska transient)/ 243 (West Coast transient)	41.7* 21.4 51.8
Minke whale	0	42	42	Unknown	Unknown
Dall's Porpoise	7	35	42	83,400	<0.01

<sup>1</sup>6.1 percent of humpbacks whales in southeast Alaska (36) are from Mexico DPS (Wade *et al.* 2016)

\* -Updated information from Muto *et al.* 2019. Draft Alaska Marine Mammal Stock Assessments, 2019. Available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>.

### *Description of Proposed Mitigation, Monitoring and Reporting Measures*

A description of proposed mitigation, monitoring, and reporting measures is found in the previous documents, which are identical to those contained in this proposed 2020-2021 IHA. The following measures would apply to ADOT&PF's mitigation requirements:

- *Implementation of Shutdown Zone*—For all pile driving activities, ADOT&PF will implement a shutdown zone. 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). In this case, shutdown zones (Table 4) are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for some authorized species, based on NMFS’ acoustic technical guidance (NMFS 2018).

- *Implementation of Monitoring Zones*—ADOT&PF must monitor Level A harassment zones as shown in Table 4. These zones are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in permanent threshold shift (PTS). ADOT&PF must also monitor the Level B harassment disturbance zones as shown in Table 4 which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity, and also allows for the collection of marine mammal and effects data. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (82 FR 17209; April 10, 2017) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in this proposed 2020-2021 IHA.

**Table 4. Shutdown, Injury and behavioral Harassment Isopleths from Impact and Vibratory Pile Driving.**

Species	Shutdown Zone – Impact /Vibratory	Level A Harassment Zone – Impact	Level B Harassment Zone - Impact/Vibratory
Steller Sea Lion	25/10 m	n/a	2,090/3,265 m
Humpback whale	550/20 m	n/a	2,090/3,265 m
Harbor Seal	100/10 m	285 m	2,090/3,265 m
Harbor Porpoise	100/20 m	630 m	2,090/3,265 m
Killer whale	25/10 m	n/a	2,090/3,265 m
Minke whale	550/20 m	n/a	2,090/3,265 m
Dall’s Porpoise	100/20 m	630 m	2,090/3,265 m

- *Temporal and Seasonal Restrictions*—Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted and all in-water construction will be limited to the periods February 15 through May 31, 2020, and September 1 through November 30, 2020.
- *Soft Start*—The use of a soft-start procedure is believed 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 implement soft start procedures. Soft Start is not required during vibratory pile driving and removal activities.
- *Visual Marine Mammal Observation*—Monitoring must be conducted by qualified marine mammal observers (MMOs), who are trained biologists, with minimum qualifications described in the **Federal Register** notice of the issuance of the 2017-2018 IHA (82 FR 17209; April 4, 2017). In order to effectively monitor the pile driving monitoring zones, two MMOs must be positioned at the best practical vantage point(s). If waters exceed a sea-state which restricts the observers' ability to make observations within the shutdown zone (*e.g.*, excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. MMOs shall record specific information on the sighting forms as described in the **Federal Register** notice of the issuance of the 2017-2018 IHA (82 FR 17209; April 10, 2017). At the conclusion of the in-water construction work, ADOT&PF will provide NMFS with a monitoring report, which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.
- ADOT&PF must conduct sound source verification (SSV) testing of impact and vibratory pile driving for this project within seven days after underwater pile driving work is initiated. An acoustic monitoring plan must be submitted to NMFS for review and approval. The SSV testing must be conducted by an acoustical firm with prior experience conducting SSV tests in Alaska. Results must be sent to NMFS no later than 14 days after field testing has been completed. If necessary, the shutdown, Level A, and Level B harassment zones will be adjusted to meet MMPA requirements within 7 days of NMFS receiving results.

## **Determinations**

ADOT&PF proposes to conduct activities similar to those covered in the previous 2017-2018 and 2018-2019 IHAs. As described above, the number of estimated takes of the same stocks of marine mammals are the same as those authorized in the 2017-2018 and 2018-2019 IHAs that were found to meet the negligible impact and small numbers standards. Our analysis showed that less than 9 percent of the populations of affected stocks, with the exception of minke and killer whales, could be taken by harassment. For Northern resident and West Coast transient killer whales, the percentages, when instances of take are compared to abundance, are 41.7 percent and 51.8 percent, respectively. However, the takes estimated for these stocks (up to 126 instances assuming all takes are accrued to a single stock) are not likely to represent unique individuals. Instead, we anticipate that there will be multiple takes of a smaller number of individuals.

The Northern resident killer whale stock are most commonly seen in the waters around the northern end of Vancouver Island, and in sheltered inlets along British Columbia's Central and North Coasts. They also range northward into Southeast Alaska in the winter months. Pile driving operations are not permitted from December through February. It is unlikely that such a large portion of Northern resident killer whales with ranges of this magnitude would be concentrated in and around Icy Passage.

NMFS believes that small numbers of the West coast transient killer whale stock would be taken based on the limited region and duration of exposure in comparison with the known distribution of the transient stock. The West coast transient stock ranges from Southeast Alaska to California, while the proposed project activity would be stationary. A notable percentage of West coast transient whales have never been observed in Southeast Alaska. Only 155 West coast transient killer whales have been identified as occurring in

Southeast Alaska according to Dahlheim and White (2010). The same study identified three pods of transients, equivalent to 19 animals that remained almost exclusively in the southern part of Southeast Alaska (*i.e.* Clarence Strait and Sumner Strait). This information indicates that only a small subset of the entire West coast Transient stock would be at risk for take in the Icy Passage area because a sizable portion of the stock has either not been observed in Southeast Alaska or consistently remains far south of Icy Passage.

There is no current abundance estimate for minke whale since population data on this species is dated. However, the proposed take of 42 minke whales may be considered small. A visual survey for cetaceans was conducted in the central-eastern Bering Sea in July-August 1999, and in the southeastern Bering Sea in 2000. Results of the surveys in 1999 and 2000 provide provisional abundance estimates of 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively (Moore *et al.*, 2002). Additionally, line-transect surveys were conducted in shelf and nearshore waters in 2001-2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 for this area (Zerbini *et al.*, 2006). However, these estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. (Allen and Anglis 2012). Clearly, 42 authorized takes should be considered a small number, as it constitutes only 5.2 percent of the smallest abundance estimate generated during the surveys just described and each of these surveys represented only a portion of the minke whale range.

Note that the numbers of animals authorized to be taken for all species, with the exception of Northern resident and West coast transient killer whales, would be

considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

The proposed 2020-2021 IHA includes mitigation, monitoring, and reporting requirements that are identical to those depicted in the 2017-2018 and 2018-2019 IHAs, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

### **Endangered Species Act (ESA)**

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.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion on March 21, 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section

101(a)(5)(D) of the MMPA. This consultation concluded that the project was likely to adversely affect but unlikely to jeopardize the continued existence of the threatened Mexico DPS of humpback whale (*Megaptera novaeangliae*) or the endangered western DPS of Steller sea lion (*Eumatopias jubatus*), or adversely modify designated critical habitat for Steller sea lions. In a memo dated June 13, 2018, NMFS AKR concluded that re-initiation of section 7 consultation was not necessary for the issuance of the 2018-2019 IHA. NMFS PR1 has been in contact with AKR Protected Resources Division and expects a similar outcome for the proposed 2020-2021 IHA. The only modification to the project is a time shift of approximately one year and moving the spring start date forward by approximately two weeks. No additional take has been requested by ADOT&PF or is proposed for authorization by NMFS. All mitigation measures described in the Biological Opinion would be implemented to reduce harassment of marine mammals and document take of marine mammals. For these reasons, we anticipate no new or changed effects of the action beyond what was considered in the 2017 Biological Opinion. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

### **Proposed Authorization and Request for Public Comments**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to ADOT&PF for conducting pile driving and removal activities as part of the Gustavus Ferry Terminal Improvements Project for a period of one year from February 15, 2020 through February 14, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements from the 2018-2019 IHA are incorporated. We request comment on our analyses and the proposed issuance of the IHA which would be identical

to the previous IHA with the exception of a construction start date of February 15 instead of March 1. A draft of the proposed IHA can be found at

*<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*.

### **Request for Public Comments**

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed ADOT&PF project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 9, 2020

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Catherine Marzin,  
Deputy Director, Office of Protected Resources,  
National Marine Fisheries Service.

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