



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[RTID 0648-XR110]**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California**

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

**ACTION:** Notice; request for comments on proposed Renewal incidental harassment authorization.

**SUMMARY:** NMFS received a request from Chevron Products Company (Chevron) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period.

**DATES:** Comments and information must be received no later than **[INSERT DATE 15 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.DeJoseph@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. All comments received are a part of the public record and will generally be posted online at *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* 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:** Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the proposed and final authorizations for both the 2019 and 2018 IHAs, and the 2019 IHA), as well as a list of the references cited in this document, may be obtained online at: *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Marine Mammal Protection Act (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 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 such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each

reauthorization. In the notice of proposed IHA for the 2019 authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, 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 **Description of the Specified Activities and Anticipated Impacts** section of this notice is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** 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).

- (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.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

[www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals). Any comments received on the potential Renewal, along with relevant comments on the 2019 IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

The NDAA (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.”

### **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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

### **History of Request**

On June 19, 2019, NMFS issued an IHA to Chevron Products Company to take marine mammals incidental to Chevron Richmond Refinery Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California (84 FR 28474; June 19, 2019), effective from June 1, 2019 through May 31, 2020. On January 30, 2020, NMFS received a request for the Renewal of this 2019 IHA. As described in the request for Renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial 2019 IHA but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-long-wharf-maintenance-and-efficiency-project-san-0>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Of note, NMFS previously issued an IHA to Chevron for similar work (82 FR 27240; June 14, 2017). However, the construction schedule and scope was revised and no work was conducted under that IHA. NMFS issued a second IHA on June 1, 2018 to Chevron for work not conducted in 2017 (83 FR 27548; June 13, 2018). Because the activities addressed in the 2019 IHA were very similar to those analyzed in the 2018 IHA, the Federal Register Notices supporting the 2019 IHA refer back to the Federal Register Notices supporting the 2018 IHA for more detailed descriptions.

### **Description of the Specified Activities and Anticipated Impacts**

Chevron will be unable to complete all of the planned work in the 2019 IHA at the Richmond Refinery Long Wharf (Long Wharf) before the expiration date of May 31, 2020 and, therefore, they have requested a Renewal IHA to authorize take of marine mammals for the subset of the initially planned work that could not be completed. These planned construction activities would allow Chevron to comply with Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) and to improve safety and efficiency at the Long Wharf. The work would be identical to a subset of the activities analyzed in the 2019 IHA and include both vibratory and impact pile driving for removal and installation of piles. Chevron installed 46 piles and removed 10 piles (of which 8 were temporary and removed shortly after installation) over approximately 18 construction days under the 2019 IHA, leaving 69 piles remaining to be installed and up to 109 piles to be removed in the June 1 to November 30, 2020 construction window. Similarly, the mitigation and monitoring would be identical to that included in the 2019 IHA. All documents associated with the 2019 IHA (i.e., the IHA application, Proposed IHA, Final IHA, public comments, monitoring reports, etc.) can be found on NMFS's

website, <https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-long-wharf-maintenance-and-efficiency-project-san-0>. All documents associated with the 2018 IHA (which are sometimes referenced in the Federal Register Notices supporting the 2019 IHA) can be found at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-long-wharf-maintenance-and-efficiency-project-san>.

Anticipated impacts, which would include both Level A and Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the 2019 IHA (though fewer, since from a subset of activities). Species with the expected potential to be present during all or a portion of the in-water work window include the Gray whale (*Eschrichtius robustus*), Bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), California sea lion (*Zalophus californianus*), Northern fur seal (*Callorhinus ursinus*), Pacific harbor seal (*Phoca vitulina richardii*), and Northern elephant seal (*Mirounga angustirostris*). Monitoring results of the 2019 construction activities (Table 1) indicate that observed exposures above Level A and Level B harassment thresholds (see monitoring report) were below the amount authorized in association with the amount of work conducted; thus, the subset of Level A and Level B take remaining from that authorized under the 2019 IHA will be sufficient to cover the 2020 pile installation and removal activities.

**Table 1— Take Authorized in 2019 IHA and Take Documented by Species and Stock in the 2019 Construction Window**

Species	Stock	Authorized Level A Takes	Authorized Level B Takes	Documented 2019 Level A Take	Documented 2019 Level B Take
Harbor seal	California	513	6,572	0	94 <sup>a</sup>
California	Eastern U.S.	--	479	0	1 <sup>b</sup>

sea lion					
Harbor porpoise	San Francisco – Russian River	4	509	0	2 <sup>c</sup>
Northern elephant seal	California Breeding	--	23	0	0
Gray whale	Eastern North Pacific	--	2	0	0
Northern fur seal	California	--	10	0	0
Bottlenose Dolphin	California Coastal	--	30	0	0
<p>a. Sum of observed (48) and extrapolated (46).</p> <p>b. No take extrapolated. Only one sea lion was observed sitting on a moving tug outside of construction activity.</p> <p>c. Sum of observed (1) and extrapolated (1).</p>					

*Detailed Description of the Activity*

A detailed description of the construction activities for which take is proposed here may be found in the Notices of the Proposed and Final IHAs for the 2019 authorization. The work would be identical to a subset of the activities analyzed in the 2019 IHA and include both vibratory and impact pile driving for removal and installation of piles.

All piles for which take was authorized in the 2019 IHA were expected to be installed/removed during the 2019 in-water work window from June 1 to November 30, 2019. However, due to construction schedule delays, designated work was only conducted on 18 of the estimated 67 days of pile driving activity planned in the 2019 IHA. Table 2 shows the work completed in 2019 and the remaining subset of work to be covered under this Renewal. Identical to the 2019 IHA, pile driving activities would be timed to occur within the standard NMFS work windows for Endangered Species Act (ESA)- listed fish species (June 1 through November 30). The proposed Renewal would be effective for a period of one year from the date of issuance.

**Table 2— Pile Installations Completed in 2019 and Remaining Subset Planned for the 2020 Construction Window**

Pile Type	Pile Driver Type	Number of Piles 2019 IHA	Number of Piles Completed in 2019	Number of Piles Requested in 2020 Renewal Application	Number Installed/ Removed per day 2020	Number of Driving Days 2020
60-inch steel pipe piles	Impact	8	0	8	1	8
36-inch steel template pile (Installation and removal)	Vibratory	8	8	0	--	0
20-inch steel template pile (Installation and removal)	Vibratory	8	8	0	--	0
22-inch concrete pile removal	Vibratory	5	2	3	5	1
24-inch square concrete	Impact	39	30	9	2	5
12-inch composite piles	Vibratory	52	0	52	5	11
Timber pile removal	Vibratory	106	0	106	12	9
<b>TOTAL</b>	--	<b>226</b>	<b>48*</b>	<b>178</b>	<b>NA</b>	<b>34</b>
*46 piles were installed and 2 other piles were removed. Eight of the 46 piles were temporary and removed shortly after installation. Thus, a total of 48 piles were utilized in construction activities during 2019, in which 46 pile installations and 10 pile removals were monitored, as required by the initial IHA.						

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notices of the Proposed and Final IHAs for the 2019 authorization. NMFS has reviewed the monitoring data from the 2019 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2019 IHA. The only change from the 2019 IHA is a reduction of the San Francisco-Russian River harbor porpoise and the U.S. California sea lion estimated stocks from 9,886 to 7,524 and 296,750 to 257,606,

respectively (Carretta *et al.* 2019). Preliminary determinations conclude that these updates do not change our findings.

#### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the in the **Federal Register** notice of the issuance of the 2018 IHA for Chevron’s Long Wharf Maintenance and Efficiency project (83 FR 27548; June 13, 2018) and the **Federal Register** notice of the proposed IHA (83 FR 18802; April 30, 2018). NMFS has reviewed the monitoring data from the 2019 IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

#### *Estimated Take*

As stated above in the **Description of the Specified Activities and Anticipated Impacts** section, the purpose of this Renewal IHA is to authorize take of marine mammals for the subset of the initially planned work that could not be completed before the expiration of the 2019 IHA, May 31, 2020. The subset of work completed in 2019 and that left to be completed during the 2020 construction window is listed in Table 2.

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the 2019 authorization. Specifically, the source levels, in-water construction window, and marine mammal density data applicable to this authorization remain unchanged from the previously issued IHA, just the new, lesser, remaining levels of activity have been

applied. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

**Table 3—Authorized Take of Stocks, Renewal IHA 2020**

Species	Stock	Authorized Level A Take	Authorized Level B Take
Harbor seal	California	513*	5,114
California sea lion	Eastern U.S.	--	302
Harbor porpoise	San Francisco– Russian River	4*	321
Northern elephant seal	California Breeding	--	11
Gray whale	Eastern North Pacific	--	2
Northern fur seal	California	--	10
Bottlenose Dolphin	California Coastal	--	17

\* Level A take is associated with impact pile driving of 60-inch steel pipe, which was not conducted in 2019 as planned and is part of the subset of work to be completed in 2020.

*Description of Proposed Mitigation, Monitoring and Reporting Measures*

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** Notice announcing the issuance of the 2019 IHA, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Proposed Mitigation

*Time Restrictions* — For all in-water pile driving activities, Chevron must operate only during daylight hours (7 a.m. to 7 p.m.).

*Attenuation Devices* — Chevron must implement the use of bubble curtains during impact driving of 60-inch steel piles and 24-inch square concrete piles and operate it in a manner consistent with the following performance standards: 1) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full

depth of the water column. 2) The lowest bubble ring must be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring must ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact. 3) Air flow to the bubblers must be balanced around the circumference of the pile.

*Establishment of Shutdown Zone* — For all pile driving and extraction activities Chevron must implement and monitor shutdown zones. See Table 4 for minimum radial distances required for shutdown zones.

**Table 4—Radial Distance to Shutdown Zones**

Project Element Requiring Pile Installation	Shutdown Zones meters				
	Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds
<b>Attenuated Impact Driving (with bubble curtain)</b>					
60-inch steel pipe	840	30	50	30	35
24-inch square concrete	20	10	50	15	10
<b>Impact Pile Proofing (no bubble curtain)</b>					
36-inch steel pipe pile	100	10	80	30	10
<b>Vibratory Driving/Extraction</b>					
12-inch Composite Barrier Pile	20	10	50	15	10
36-inch steel pipe pile	20	10	50	15	10
20-inch steel pipe pile	10	10	50	10	10
Wood and concrete pile extraction	10	10	50	10	10

*Establishment of Monitoring Zones for Level A and Level B* — Chevron must establish and monitor Level A harassment zones during impact driving for harbor seal extending to 450 meters and for harbor porpoise extending to 990 meters. Chevron must also establish and monitor Level B harassment zones as depicted in Table 5.

**Table 5—Radial Distances to Monitoring Zones**

<b>File Type</b>	<b>Distance to Threshold 160/120 dB RMS (Level B) in meters</b>
<b>Attenuated Impact Driving (with bubble curtain)</b>	
60-inch steel pipe (1 per day)	740
24-inch square concrete (1-2 per day)	75
<b>Impact Pile Proofing (no bubble curtain)</b>	
36-inch steel pipe pile (2 total)	1,000
<b>Vibratory Driving/Extraction</b>	
12-Inch Composite Barrier Piles (5 per day)	15,850
36-inch steel pipe pile (4 per day)	21,545
20-inch steel pipe pile (4 per day)	7,360
Wood and concrete pile extraction (12 per day)	1,360

*Soft Start* — Chevron must use soft start techniques when impact pile driving.

Chevron must provide an initial set of strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets. Soft start must 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 thirty minutes or longer.

*Pre-Activity Monitoring* — Pre-activity monitoring must take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring must continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described below.

If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location must be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

*10-Meter Shutdown Zone* — During the in-water operation of heavy machinery (e.g., barge movements), a 10-m shutdown zone for all marine mammals must be implemented. If a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions.

*Non-authorized Take Prohibited* — If a species for which authorization has not been granted or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes without re-sighting has elapsed.

#### Proposed Monitoring Measures

*Visual Marine Mammal Observation* — the following visual monitoring measures must be implemented:

Baseline biological monitoring must occur within one week before the project's start date.

Monitoring distances, in accordance with the identified shutdown zones, Level A and Level B zones, must be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions.

Monitoring locations must be established at locations offering best views of the monitoring zone. One protected species observer (PSO) must be stationed at the north end of the wharf monitoring the entire observable area with a special focus on the section between Castro Rocks and the wharf.

At least two PSOs must be actively scanning the monitoring zone during all pile driving activities.

Observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with distance from piles being driven or removed.

Monitoring must be continuous unless the contractor takes a break longer than 2 hours from active pile and sheet pile driving, in which case monitoring must be required 30 minutes prior to restarting pile installation.

For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone or Level A zone, the pile in progress must be completed and then pile driving suspended until visibility conditions improve.

Monitoring of pile driving must be conducted by qualified PSOs, who must have no other assigned tasks during monitoring periods. Chevron must adhere to the following conditions when selecting observers: 1) Independent PSOs must be used (*i.e.*, not construction personnel); 2) At least one PSO must have prior experience working as a marine mammal observer during construction activities; 3) Other PSOs may substitute education (degree in biological science or related field) or training for experience; and 4) Chevron must submit PSO CVs for approval by NMFS.

Chevron must ensure that observers have the following additional qualifications:

- 1) Ability to conduct field observations and collect data according to assigned protocols;
- 2) Experience or training in the field identification of marine mammals, including the identification of behaviors;
- 3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- 4) 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, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- 5) 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.

*Hydroacoustic Monitoring* — Sound Source Verification (SSV) testing must be conducted as stipulated in the Hydroacoustic Monitoring Plan. Acoustic monitoring must be conducted on the following: 1) Acoustic monitoring for at least two timber piles (vibratory); 2) Acoustic monitoring for at least four 24-inch square concrete piles

(impact); 3) Acoustic monitoring for at least two 20-inch steel piles (vibratory); 4) Acoustic monitoring for at least two 36-inch steel piles (vibratory); 5) Acoustic monitoring for at least two 60-inch steel piles (impact); and 6) Acoustic monitoring of two 12-inch composite piles (vibratory).

Testing must be conducted by an acoustical firm with prior experience conducting SSV testing. Final results must be sent to NMFS and may be used to establish shutdown and monitoring isopleths. Any alterations to the shutdown or monitoring zones based on testing data must be approved by NMFS.

#### Reporting

*Marine Mammal Monitoring*— A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving and removal activities or a minimum of 60 days prior to any subsequent IHAs. A final report must be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS.

The report must include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include: 1) Dates and times (begin and end) of all marine mammal monitoring; 2) Construction activities occurring during each daily observation period, including how many and what type of piles were removed or driven and by what method (*i.e.*, impact, vibratory, drilling); 3) Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state); 4) The number of marine mammals observed, by species, relative to the pile location and if pile removal or installation was occurring at time of sighting; 5) Age and

sex class, if possible, of all marine mammals observed; 6) PSO locations during marine mammal monitoring; 7) Distances and bearings of each marine mammal observed to the pile being removed or driven for each sighting (if pile removal or installation was occurring at time of sighting); 8) Description of any marine mammal behavior patterns during observation, including direction of travel; 9) Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species; 10) Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; 11) Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and 12) Level B harassment exposures recorded by PSOs must be extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

*Injury, Serious Injury, or Mortality*—In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury, serious injury or mortality, Chevron would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS (301-427-8701), and the West Coast Regional Stranding Coordinator (562-980-3230). The report must include the following: 1) Description of the incident; 2) Environmental conditions (*e.g.*, Beaufort sea state, visibility); 3) Description of all marine mammal observations in the 24 hours preceding the incident; 4) Species identification or description of the animal(s) involved; 5) Fate of

the animal(s); and 6) Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Chevron to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance.

Chevron would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Chevron discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition as described in the next paragraph), Chevron would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Chevron to determine whether modifications in the activities are appropriate.

In the event that Chevron discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Chevron would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator within 24 hours of the discovery. Chevron would provide photographs or video footage (if available) or other

documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

### **Public Comments**

As noted previously, NMFS published a notice of a proposed IHA (84 FR 17788; April 26, 2019) and solicited public comments on both our proposal to issue the 2019 IHA for pile driving and extraction activities and on the potential for a Renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the 2019 IHA (84 FR 28474; June 19, 2019). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2019 IHA.

*Comment:* The Commission recommended that NMFS refrain from implementing its proposed renewal process for Chevron's subsequent authorizations. The Commission believes that the renewal process should be used sparingly and selectively, by limiting its use only to those proposed IHAs that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses. Also, the Commission recommended that NMFS provide the Commission and other reviewers the full 30-day comment opportunity set forth in section 101(a)(5)(D)(iii) of the MMPA.

*Response:* The Commission has submitted this comment multiple times, and NMFS has responded multiple times, including, for example, more recently in the notice of issuance of an IHA to Avangrid Renewables (84 FR 31032, June 28, 2019), and we refer the Commission to those responses. We also include NMFS' original response to the comment received on the 2019 Chevron proposed IHA here:

Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects NMFS has explained on its website and in individual **Federal Register** notices that Renewal IHAs are appropriate where the continuing activities are identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. If Chevron seeks to obtain a Renewal IHA in the future, NMFS will determine at that time whether the request meets the necessary conditions under which a Renewal IHA could be considered.

NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on Renewal IHAs within the limitations of processing IHA applications efficiently. **Federal Register** notices for the proposed initial IHAs identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the *Request for Public Comments* section and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we will publish notice of the proposed IHA Renewal in the **Federal Register** and provide an additional 15 days for public comment, making a total of 45 days of public comment. We also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA. Where the commenter has already had the opportunity to review and comment on the potential for a Renewal in the initial proposed IHA for these activities, the abbreviated additional comment period is

sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

### **Preliminary Determinations**

The proposed action of this Renewal IHA, both vibratory and impact pile driving for removal and installation of piles, would be identical to a subset of the activities analyzed in the 2019 IHA, as listed in Table 2. Based on the analysis detailed in the Notice of the Final IHA for 2019 authorization, 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 found that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the 2019 IHA. This includes consideration of the estimated abundance of harbor porpoise and California sea lion stock decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will affect 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; (4) Chevron'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, and; (5) appropriate monitoring and reporting requirements are included.

## **Endangered Species Act**

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

## **Proposed Renewal IHA and Request for Public Comment**

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to Chevron for conducting vibratory and impact pile driving for removal and installation of piles at the Long Wharf in San Francisco Bay, California during the in-water construction window of June 1 through November 30, 2020, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final 2019 IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: April 30, 2020.

**Donna S. Wieting,**

*Director, Office of Protected Resources,*

*National Marine Fisheries Service.*

[FR Doc. 2020-09630 Filed: 5/5/2020 8:45 am; Publication Date: 5/6/2020]