



## INCIDENTAL HARASSMENT AUTHORIZATION

The Municipality of Skagway (MOS) and their designees are hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to incidentally harass marine mammals, under the following conditions:

1. This incidental harassment authorization (IHA) is valid from October 1, 2023 through September 30, 2024.
2. This IHA authorizes take incidental to impact and vibratory pile driving and removal, as specified in the MOS's July 19<sup>th</sup>, 2023 IHA application, associated with redevelopment of the Skagway Ore Terminal in Skagway, Alaska. Hereafter (unless otherwise specified) the term "pile driving" is used to refer to both pile installation and pile removal.
3. General Conditions
  - (a) A copy of this IHA must be in the possession of the Holder of the Authorization (Holder), supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this IHA at all times that activities subject to this IHA are being conducted.
  - (b) The species and/or stocks authorized for taking are listed in Table 1. Authorized take, by Level A and Level B harassment only, is limited to the species and numbers listed in Table 1.
  - (c) The taking by serious injury or death of any of the species listed in Table 1 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of this IHA.
  - (d) The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant MOS staff are trained prior to the start of activities subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.



4. Mitigation Requirements

- (a) The Holder must employ PSOs and establish monitoring locations as described in section 5 of this IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.
- (b) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (i.e., pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. If in-water work ceases for more than 30 minutes, MOS must conduct pre-clearance monitoring of both the Level B harassment zone and the shutdown zone (Table 2)
- (c) If a marine mammal is observed entering or within the shutdown zones indicated in Table 2, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in condition 4(e) of this IHA.
- (d) 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 2 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.
- (e) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 2 or 15 minutes have passed without re-detection of the animal.
- (f) The Holder must use soft start techniques when impact pile driving. Soft start requires contractors 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. A 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 30 minutes or longer.
- (g) Pile driving activity must be halted (as described in condition 4(c) of this IHA) upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone (as shown in Table 2).

- (h) The Holder, construction supervisors and crews, PSOs, and relevant MOS staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- (i) Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (e.g., fog, heavy rain, night), the Holder shall delay construction activities until observers are confident marine mammals within the shutdown zone could be detected.

5. Monitoring Requirements

- (a) Marine mammal monitoring must be conducted in accordance with the conditions in this section and this IHA.
- (b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:
  - (i) PSOs must be independent (i.e., not construction personnel) 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 or Letter of Concurrence.
  - (iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
  - (iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
  - (v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.
- (c) The Holder must establish the following monitoring locations with the best views of monitoring zones:

- (i) For impact and vibratory pile driving, land based monitoring stations will be at the Railroad Dock, Yakutania Point, and Kasidaya;
  - (ii) For the large vibratory pile driving zones, monitoring will be done from the land based stations and using observers stationed on mobile vessel traversing the south end of the monitoring zone
- (d) For all pile driving activities, a minimum of one PSO (up to five) must be assigned to each active pile driving location to monitor the shutdown zones.
- (e) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in section 6 of this IHA. Acoustic monitoring will be conducted during in-water pile installation and removal, for each of the three scenarios (impact installation of steel piles, vibratory installation and removal of steel piles, and vibratory removal of timber piles).

## 6. Reporting

- (a) The Holder must submit its draft report(s) on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.
- (b) All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *itp.harlacher@noaa.gov*.
- (c) The marine mammal report, at minimum, must include:
  - (i) Dates and times (begin and end) of all marine mammal monitoring;
  - (ii) Construction activities occurring during each daily observation period, including:
    - A. The number and type of piles that were driven and the method (e.g., impact, vibratory);

- B. Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving); and
- (iii) PSO locations during marine mammal monitoring;
- (iv) 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;
- (v) Upon observation of a marine mammal, the following information:
  - A. Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
  - B. Time of sighting;
  - C. 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;
  - D. Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
  - E. Estimated number of animals (min/max/best estimate);
  - F. Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
  - G. Animal's closest point of approach and estimated time spent within the harassment zone;
  - H. 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);

- (vi) Number of marine mammals detected within the harassment zones, by species; and
  - (vii) Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.
- (d) The Holder must submit all PSO datasheets and/or raw sighting data with the draft report, as specified in condition 6(b) of this IHA.
- (e) The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring section of the application, the data must be provided in spreadsheet format, and, at minimum, must include:
- (i) Type and size of pile being driven, substrate type, method of driving during recordings (e.g., hammer model and energy), and total pile driving duration;
  - (ii) Whether a sound attenuation device is used and, if so, a detailed description of the device used and the duration of its use per pile;
  - (iii) A description of the sound monitoring equipment, including a detailed description of the depths and locations of the hydrophones relative to the pile being driven;
  - (iv) For impact pile driving (per pile): Number of strikes and strike rate; depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1  $\mu$ Pa): root mean square sound pressure level ( $SPL_{rms}$ ); cumulative sound exposure level ( $SEL_{cum}$ ), peak sound pressure level ( $SPL_{peak}$ ), and single-strike sound exposure level ( $SEL_{s-s}$ );
  - (v) For vibratory driving/removal (per pile): Duration of driving per pile; mean, median, and maximum sound levels (dB re: 1  $\mu$ Pa): root mean square sound pressure level ( $SPL_{rms}$ ), cumulative sound exposure level ( $SEL_{cum}$ ) (and timeframe over which the sound is averaged);
  - (vi) One-third octave band spectrum and power spectral density plot for each pile monitored and average spectrum for each type of driving (*i.e.* impact, vibratory of steel, vibratory of timber); and
  - (vii) Environmental data, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature,

water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater sound levels (e.g., aircraft, boats, etc.).

- (viii) Sound measurement data shall be provided to NMFS in tabular spreadsheet format (Microsoft Excel or similar).

(f) 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 (*PR.ITP.MonitoringReports@noaa.gov* and *itp.harlacher@noaa.gov*) and to the Alaska regional stranding network (877 925-7773) 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:

- (i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- (ii) Species identification (if known) or description of the animal(s) involved;
- (iii) Condition of the animal(s) (including carcass condition if the animal is dead);
- (iv) Observed behaviors of the animal(s), if alive;
- (v) If available, photographs or video footage of the animal(s); and
- (vi) General circumstances under which the animal was discovered.

- 7. This Authorization may be modified, suspended or revoked if the Holder fails to abide by the conditions prescribed herein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines: (1) the authorized taking is likely to have or is having more than a negligible impact on the species or stocks of affected marine mammals, (2) the authorized taking is likely to have or is having an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses, or (3) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat.

## 8. Renewals

On a case-by-case basis, NMFS may issue a one-time, 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, activities (or a subset of those activities) are planned or (2) the specified activities will not be completed by the time the IHA expires and a Renewal would allow for completion of the activities, provided all of the following conditions are met:

- (a) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (note a Renewal IHA expiration date cannot extend beyond one year from expiration of this IHA).
- (b) The request for renewal must include the following:
  - (i) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed for this 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).
  - (ii) 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.
- (c) 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 made in support of this IHA remain valid.

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For Kimberly Damon-Randall,  
Director, Office of Protected Resources  
National Marine Fisheries Service



Table 1. Authorized Incidental Take.

| Species          | Stock   | Take by Level A harassment | Take by Level B harassment |
|------------------|---|----------------------------|----------------------------|
| Humpback whale   | Hawaii  | 2                          | 13                         |
|                  | Mexico-North Pacific  | 0                          | 1                          |
| Minke Whale      | Alaska  | 2                          | 6                          |
| Dall's Porpoise  | Alaska  | 43                         | 193                        |
| Harbor Porpoise  | Northern Southeast Alaska Inland Waters   | 17                         | 75                         |
| Killer Whale     | Eastern North Pacific, Northern Residents, Southeast Alaska + Eastern North Pacific, Alaska Residents + West Coast Transients + Gulf, Aleutian, Bering Transients | 2                          | 90                         |
| Harbor Seal      | Alaska – Lynn Canal/Stephens Passage  | 193                        | 2,760                      |
| Steller Sea Lion | Eastern US +Western US  | 2                          | 196                        |

Table 2. Shutdown and Harassment Zones.

| Activity  | Minimum shutdown zone        |                              |                               |        |         | Harassment Zone     |
|---|------------------------------|------------------------------|-------------------------------|--------|---------|---------------------|
|   | Low-Frequency (LF) Cetaceans | Mid-Frequency (MF) Cetaceans | High-Frequency (HF) Cetaceans | Phocid | Otariid |                     |
| 36-in to 48-in steel pile**, Impact Installation            | 2,350                        | 85                           | 2,795                         | 1,260  | 95      | 1,585               |
| 24-in steel pile, Impact Installation                       | 1,250                        | 45                           | 1,485                         | 670    | 50      | 860                 |
| Up to 30-in steel pile*, Vibratory Installation and Removal | 15                           | 10                           | 20                            | 10     | 10      | 3,985               |
| 36-in to 48-in steel pile**, Vibratory Installation         | 70                           | 10                           | 100                           | 40     | 10      | 16,300 <sup>1</sup> |
| 14-in timber pile, Vibratory Removal                        | 15                           | 10                           | 25                            | 10     | 10      | 3,415               |

\*Includes piles sizes: 10.75-in, 14-in, 16-in, 20-in, 24-in, 28-in, and 30-in

\*\*Includes pile sizes: 36-in, 42-in, and 48-in

<sup>1</sup>Shoreline of Taiya Inlet obstructs sound transmission and limits the extent of the Level B harassment zone