

FINDING OF NO SIGNIFICANT IMPACT FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION FOR FURIE OPERATING ALASKA'S NATURAL GAS ACTIVITIES IN COOK INLET, ALASKA

I. Purpose of Finding of No Significant Impact (FONSI):

The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). The Council on Environmental Quality (CEQ) Regulations direct agencies to prepare a Finding of No Significant Impact (FONSI) when an action not otherwise excluded will not have a significant impact on the human environment. 40 CFR §§ 1500.4(b), 1500.5(b), & 1501.6. To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action. 40 CFR § 1501.3(b). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR § 1501.3(b)(1)), and whether the project is considered minor or small-scale (NAO 216-6A CM, Appendix A-2). In considering the degree of effect on these resources, agencies should examine, as appropriate, short- and long-term effects, beneficial and adverse effects, and effects on public health and safety, as well as effects that would violate laws for the protection of the environment (40 CFR § 1501.3(b)(2)(i)-(iv); NAO 216-6A CM Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration. 40 CFR § 1501.3(b)(2)(i)-(iv). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing this FONSI, we reviewed the Environmental Assessment (EA) for the Issuance of two, consecutive one-year Incidental Harassment Authorizations for the Take of Marine Mammals Incidental to Furie Operating Alaska, LLC's Natural Gas Activities in Cook Inlet, Alaska which evaluates the affected area, the scale and geographic extent of the proposed action, and the degree of effects on those resources (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude). The EA is hereby incorporated by reference. 40 CFR § 1501.6(b).

II. Approach to Analysis:

NMFS proposes to issue two consecutive IHAs to Furie Operating Alaska pursuant to Section 101(a)(5)(D) of the MMPA and 50 Code of Federal Regulations (CFR) Part 216. Each IHA will be valid for one year and will authorize takes, by Level A and Level B harassment, of small numbers of marine mammals incidental to natural gas activities in Cook Inlet, Alaska. In Year 1, Furie plans to relocate the Enterprise 151 jack-up production rig (Enterprise 151 or rig) to the Julius R. Platform (JRP) site, install up to two conductor piles using an impact hammer, and conduct production drilling of up to two natural gas wells at the JRP with the Enterprise 151 rig (or a similar rig) across 45-180 days. During Year 2, Furie plans to relocate the Enterprise 151 rig to the JRP site again, potentially install one to two conductor piles using an impact hammer (depending on whether either or both of these piles are installed or not during Year 1), and conduct additional production drilling at the JRP. Furie plans to conduct the rig towing and pile driving activities between April 1 and November 15 each year, but if favorable ice conditions occur outside of that period, it may tow the

rig or pile drive outside of that period. The IHAs would be effective for one year each beginning in August 2024 and August 2025, respectively.

Sound produced by Furie's activities has the potential to result in the take, by Level A and Level B harassment, of 12 marine mammal species. Takes are expected to occur in the form of Level A harassment (slight permanent threshold shift (PTS) for harbor seals only) or Level B harassment consisting primarily of temporary modification in the behavior of individual marine mammals. Specific to Cook Inlet beluga whales, effects would be limited to Level B harassment consisting of temporary modifications in behavior such as increased swim speeds, tighter group formations, and cessation of vocalizations, but not through the loss of foraging capabilities or abandonment of habitat. Therefore, Furie requested two consecutive authorizations from NMFS for incidental taking pursuant to the MMPA. Authorizations for incidental takings of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the IHAs must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

NMFS' proposed action is a direct outcome of Furie's request for two consecutive IHAs to authorize take of marine mammals incidental to their natural gas activities in Cook Inlet, Alaska, which includes impact pile driving and rig tugging and positioning. Furie's action may cause effects to the resources in the affected area, though there is no potential for the effects of NMFS' action to add to the effects of other projects such that the effects taken together could be significant.

NMFS' proposed action, the issuance of two consecutive IHAs to Furie for their natural gas activities, is not considered to meaningfully contribute to a significant impact based on the scale of the impact (authorization of take of small numbers of 12 species of marine mammal, by Level A and Level B harassment only), and the small-scale, temporary, and short-term duration of the impact. No take of marine mammals by serious injury or mortality is anticipated or proposed to be authorized in the IHAs.

NMFS' proposed action, the issuance of two consecutive IHAs to Furie, will not meaningfully contribute to significant impacts to specific resources, given the limited scope of NMFS' action and required mitigation measures, as described in the 2024 EA and this FONSI.

III. Geographic Extent and Scale of the Proposed Action:

As stated in the 2024 EA, NMFS' proposed issuance of two consecutive IHAs to Furie would authorize take of 12 species of marine mammal incidental to natural gas activities in Cook Inlet, Alaska. The JRP, the location that Furie would tow the rig to and from, is located in middle Cook Inlet, approximately 8 miles due south of Tyonek, Alaska, and approximately 10 miles offshore from the shoreline to the southeast of the JRP. The southernmost area of operation would be the Rig Tenders Dock in Nikiski, Alaska, and the northernmost area would be the Bruce platform, located 6.4 miles (10.3 kilometers (km)) northwest of the JRP. A detailed map showing Furie's project area is provided in the EA (Figure 1). The environmental effects analyzed in the 2024 EA would occur at a small scale.

IV. Degree of Effect:

- A. *The potential for the proposed action to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection.*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would not violate any federal, state, or local laws for environmental protection. NMFS' compliance with environmental laws and regulations is based on NMFS' action and the nature of the applicant's activities. NMFS complied with the requirements of the MMPA in developing the IHAs. NMFS Office of Protected Resources (OPR) also consulted with the NMFS Alaska Region under Section 7 of the ESA to determine if the issuance of the IHAs would likely jeopardize the continued existence of listed species or result in the destruction or adverse modification of ESA designated critical habitat. The Section 7 consultation concluded that the issuance of the IHAs would not jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat, described further in section C, below. Furie would be required to obtain any additional federal, state, and local permits necessary to carry out its project and any other associated activities.

- B. *The degree to which the proposed action is expected to affect public health or safety.*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals is not likely to affect public health or safety because NMFS only authorizes the take of marine mammals associated with Furie's natural gas activities, which does not involve the public or expose the public directly (e.g., chemicals, diseases) or indirectly (e.g., food sources) to hazardous or toxic materials in a way that would be linked to the quality of the environment and well-being of humans.

- C. *The degree to which the proposed actions is expected to affect a sensitive biological resource, including:*

- a. *Federal threatened or endangered species and critical habitat;*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals is not expected to have a significant impact on endangered or threatened species or critical habitat. Based on the conclusions of the ESA section 7 consultation (summarized below) along with mitigation measures designed to avoid, minimize and mitigate impacts to ESA-listed species and critical habitat, NMFS expects that any impacts to ESA-listed marine mammals, as well as their critical habitat, would be limited to slight auditory injury (PTS; harbor seals only) or behavioral harassment as a result of take, by acoustic exposure to tugging and pile driving, and would not be significant.

Furie's proposed project has the potential to affect the following species and DPSs listed as threatened or endangered under the ESA: fin whale, humpback whale (Mexico Distinct Population Segment (DPS)), beluga whale (Cook Inlet), and Steller sea lion (Western DPS). In 2024, NMFS' Permits and Conservation Division initiated consultation with NMFS' Alaska Regional Office for the issuance of the

IHAs. On September 11, 2024, NMFS' Alaska Regional Office concluded that NMFS' issuance of the IHAs is not likely to jeopardize the continued existence of these endangered or threatened species and is not likely to destroy or adversely modify their critical habitat, and issued a Biological Opinion providing conclusions specific to NMFS' actions relevant to the proposed natural gas activities.

NMFS also requires the implementation of mitigation to reduce potential exposure of marine mammals to sound levels likely to result in take. These are described in detail in the EA and notice of issuance of the IHAs, as well in section VI of this FONSI.

The only critical habitat designation within the action area relevant to NMFS' action is for Cook Inlet beluga whales, which includes much of Cook Inlet, Alaska. Use of the critical habitat by Cook Inlet beluga whales of the critical habitat area varies temporally, specifically with a peak in beluga abundance in Knik Arm in later summer and early autumn months (i.e., August, September, and October). As described above, NMFS is requiring mitigation and monitoring measures for all project activities. The action is not likely to destroy or adversely modify Cook Inlet beluga whale, or other listed species, critical habitat.

Therefore, in consideration of the factors above, while NMFS' proposed action is likely to adversely affect ESA-listed species, the potential impacts are not expected to be significant as defined under NEPA.

b. Stocks of marine mammals as defined in the Marine Mammal Protection Act;

NMFS' proposed action of issuing two consecutive IHAs to Furie has the potential to result in the take of small numbers of 12 species of marine mammals, by Level A (harbor seal only) and Level B harassment (all 12 species), as defined in the MMPA. However, we expect take under each IHA to have a negligible impact on the affected species or stocks. Importantly, effects on individuals or groups of animals does not necessarily translate into an adverse effect to a stock or species, unless such effects result in reduced fitness for those individuals and, ultimately, accrue to the point that there is reduced reproduction or survival leading to effects on annual rates of recruitment or survival for the species.

In addition to considering estimates of the number of marine mammals that may be "taken" by harassment, NMFS considered other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assessed the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (e.g., as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

For this proposed action, the taking of marine mammals would be incidental to impact pile driving and rig tugging and positioning. The source of harassment would be limited to noise exposure from these activities. NMFS calculated the number of estimated exposures of marine mammals to noise levels exceeding our thresholds approximating Level A and Level B harassment based on in-situ sound measurements. In general, the effects on marine mammals from pile driving and rig tugging and positioning are expected to be temporary and lower level and may include, but are not limited to, hearing threshold shift (temporary and permanent), masking, stress response, and behavioral changes such as temporary avoidance of the immediate vicinity of the activity, increased travel speed and dive times, and cessation of foraging and vocalizing. The magnitude of the effect of sound on marine mammals is highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. For Furie's activities, the required mitigation and monitoring measures prescribed in the IHAs and described in the EA (including the implementation of shutdown zones for impact pile driving and pre-clearance procedures for tugging activities) will result in reduced exposure to pile driving and tugging noise and help further ensure that any resulting take will not impact the fitness of any individual marine mammals or, thereby, have any effect on any annual rates of recruitment or survival. The number of anticipated takes are low relative to the estimated abundance of the affected stock (less than 1 percent for all stocks, except for Cook Inlet beluga whales whose proposed take is 3.9 percent of the stock).

Additionally, Furie's proposed action is temporary and of relatively short duration. Potential adverse effects on prey species would also be temporary and spatially limited. Furthermore, alternate areas of similar habitat value for affected marine mammals would be available allowing animals to temporarily vacate the affected areas to avoid exposure to sound.

For these reasons, impacts resulting from this activity are not expected to significantly affect the marine mammal species or stocks as defined in the MMPA. Accordingly, NMFS determined that the specified activity would have a negligible impact on the affected species and stocks of marine mammals.

The mitigation measures required by the IHA to ensure the least practicable impact on affected marine mammals and their habitat, are described in the Mitigation Measures section of the 2023 EA and are summarized below in section VI of this FONSI.

c. *Essential fish habitat identified under the Magnuson–Stevens Fishery Conservation and Management Act;*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals, by Level A and Level B harassment, would not adversely affect essential fish habitat as identified under the Magnuson-Stevens Fishery Conservation and Management Act. Several fish species have EFH designated in

Cook Inlet. Salmonid EFH is of particular concern as they are a known prey species of Cook Inlet beluga whales. Furie's pile driving and rig towing and positioning may temporarily emit elevated noise levels into the area, on the order of hours to days across an entire calendar year, but this is not expected to have any meaningful impacts on salmon populations. Literature does not indicate any observed abnormalities in juvenile salmonids exposed to elevated industrial noises at distances greater than a few feet. Furie's activity is primarily located in the middle of the Inlet and not upriver where essential biological functions such as spawning occur. The rig towing and positioning activity would not permanently alter the substrate or other features of essential fish habitat in middle Cook Inlet, and the impact of installation of the two conductor piles would be limited to an extremely small area. In general, any negative impacts on fish habitat are expected to be minor and temporary.

d. Bird species protected under the Migratory Bird Treaty Act;

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals, by Level A and Level B harassment, would not result in a significant adverse effect on a population of migratory bird species. The impacts of NMFS' proposed action on marine mammals would be temporary and localized in nature and would not result in substantial impacts to marine mammals or to their role in the ecosystem, including in relation to birds.

e. National marine sanctuaries or monuments;

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would not affect a national marine sanctuary or monument, as Furie's proposed activity does not take place within or near either. Therefore, take authorized under the IHA, if issued, would also not occur within or near a national marine sanctuary or monument.

f. Vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems;

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would not cause substantial damage to vulnerable marine or coastal ecosystems, as the action would be limited to the authorization of take by Level A and Level B harassment of marine mammals incidental to Furie's natural gas activities. IHAs do not authorize the underlying activity (in this case, tugging and pile driving), only the take incidental to that activity. The incidental harassment of marine mammals would not have any effect on vulnerable marine or coastal ecosystems, nor any aspects of biodiversity or functioning of marine ecosystems, in a significant manner.

As described elsewhere in this document and the EA, the impact from our action is limited to impacts to marine mammals and their habitat, due to the potential increased noise levels into the marine environment during pile driving and removal. The scientific literature does indicate that impacts to the marine mammal habitat, in the form of effects to marine mammal prey species, is likely. Studies have shown

that some fish and invertebrate species may experience displacement or behavioral changes as a result of acoustic exposure from pile driving and rig tugging and positioning, such as temporary displacement or cessation in vocalization. However, any noise impact is expected to be limited to the duration of pile driving and rig tugging and positioning. Thus, short-term, minor adverse effects are likely to occur but are not expected to rise to the level of significance. Furthermore, we do not anticipate significant physical interactions from pile driving and rig tugging and positioning on the environment, other than temporary disturbance and temporarily increased turbidity in the vicinity of pile driving and removal, and do not expect that noise from pile driving and removal would impact coastal ecosystems.

g. Biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would not have a substantial impact on biodiversity or ecosystem functioning within the affected environment. NMFS expects that Furie's proposed action may result in take by Level A and Level B harassment, and has proposed issuing two consecutive IHAs to authorize this take. Any impacts would be temporary and localized in nature and would not result in substantial impacts to marine mammals in the area or to their role in the ecosystem. Take by serious injury or mortality is not anticipated nor proposed to be authorized.

Cook Inlet beluga whales primarily use the project area for transiting, and the project area is not known to be of particular importance for feeding or reproduction. The effects of our proposed action are expected to be limited to behavioral disturbance, masking, or stress. These effects are anticipated to be short term, minor, and localized.

Some recent studies show potential impacts from pile driving on zooplankton, which form the basis of many food webs, but while there is some scientific disagreement on impacts to zooplankton from this activity, those impacts are not expected to affect predator-prey relationships or otherwise impact any form of benthic productivity. Further, many marine mammals are primarily targeting eulachon runs and pile driving and rig tugging and positioning is not anticipated to effect the life cycles of fish such that those fish would not be available as prey.

D. The degree to which the proposed action is reasonably expected to affect a cultural resource: properties listed or eligible for listing on the National Register of Historic Places; archeological resources (including underwater resources); and resources important to traditional cultural and religious tribal practice.

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would have no foreseeable impact to unique areas, such as historic or cultural resources, parkland, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas. NMFS expects that Furie's proposed activity may result in take by Level A and Level B harassment to 12 species of marine mammals, in the form of short-term and localized changes in behavior or slight auditory injury in harbor seals. Such

harassment is not expected to substantially impact ecologically critical areas or cultural resources, as the impacts would be to marine mammals themselves as well as being temporary and localized in nature. Take by injury serious injury or mortality is not anticipated nor proposed to be authorized.

As stated in Table 1 of the 2024 EA, no known historical and cultural resources are located within Furie's action area.

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals is not reasonably likely to cause impacts to resources important to traditional culture and religious tribal practice, given the short-term, temporary nature of the activity, and the negligible impact of the take on affected marine mammals. As stated in Chapter 4 of the 2024 EA, though seals are harvested for subsistence uses by several communities along Cook Inlet, Furie's proposed action (and therefore, the take of seals that would be authorized through the IHA), would occur for a brief period of time outside of the primary subsistence hunting areas. As described in the EA, Cook Inlet beluga whales were historically harvested for subsistence uses but no hunt has occurred since 2005. Further, take of marine mammals by serious injury or mortality is not anticipated nor proposed to be authorized in the IHA.

The effects of the issuance of this IHA is limited to those occurring to marine mammals and their habitat; and, therefore, NMFS' proposed action is not expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. Likewise, it is not expected to cause loss or destruction of significant scientific, cultural, or historical resources. The underlying tug and construction activities would take place in middle Cook Inlet and there are no such resources there; therefore, the chance of affecting such resources is so remote and unlikely as to be discountable.

- E. The degree to which the proposed action has the potential to have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898).*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would have no foreseeable impact to minority or low-income communities, let alone a disproportionately high impact to those communities in comparison to the impacts on other communities. The location of the project activities (middle Cook Inlet, away from shore) is unlikely to overlap with activities conducted by the public. NMFS only authorizes the take of marine mammal species associated with pile driving and rig tugging and positioning, which does not involve the public.

- F. The degree to which the proposed action is likely to result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals would not result in effects that contribute to the introduction, continued

existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species. The IHA would be limited to the take of marine mammals incidental to Furie's natural gas activities. IHAs do not authorize the underlying activity (in this case, pile driving and rig tugging and positioning), only the take incidental to that activity. The incidental take of marine mammals, by Level A and Level B harassment, that would be authorized under the IHAs would not contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.

- G. The potential for the proposed action to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resource such as marshland or seagrass) or over which there is substantial uncertainty or scientific disagreement.]*

NMFS' proposed action of issuing two consecutive IHAs to Furie to incidentally take marine mammals is not expected to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resource such as marshland or seagrass) or over which there is substantial uncertainty or scientific disagreement. NMFS' proposed IHAs would authorize incidental take by Level A and Level B harassment of 12 species of marine mammal. The take that is expected to occur and proposed for authorization is based on the best available science. This incidental take is expected to be primarily in the form of short-term and localized changes in behavior and/or temporary displacement, and for permanent threshold shift for harbor seals, based on numerous scientific studies, modeling informed by scientific studies, and monitoring conducted as a requirement under previous IHAs for other projects. Take by serious injury or mortality is not anticipated nor proposed to be authorized.

V. Other Actions Including Connected Actions:

As described in Section 1.4 (Purpose and Need) of the 2024 EA, NMFS' proposed action and the purpose and need for that action, are a direct outcome of Furie's request for two IHAs in connection with its natural gas activities in Cook Inlet, Alaska. The Cumulative Impacts section of the 2024 EA discusses cumulative impacts, and describes other known recent past, present, and reasonably foreseeable future actions within the vicinity of Furie's action area. As described in the EA, Furie's activities are short-term and rig tugging and positioning would occur over approximately 2 days, and pile driving would occur over approximately 2 days. Based on the past, present, and reasonably foreseeable future actions within the project area, the incidental take associated with NMFS' issuance of the IHAs would not be expected to considerably contribute to any cumulative impacts from all other actions and activities in Cook Inlet.

VI. Mitigation and Monitoring:

The proposed action was developed to be consistent with previous IHAs issued to Hilcorp and other oil and gas operators. The following mitigation measures are included in the IHAs and would be undertaken to avoid significant impacts under NEPA:

- Furie must coordinate with local Tribes as described in its Stakeholder Engagement Plan, notify the communities of any changes in the operation, and take action to avoid or mitigate impacts to subsistence harvests.

Pile Driving

1. 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.
2. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until the protected species observer(s) (PSO) observe that one of the following conditions is met:
 - A. The animal(s) is outside of and on a path away from the clearance zone, or
 - B. For non-ESA-listed species, 15 minutes have elapsed without observing the marine mammal, or for ESA-listed species, 30 minutes have elapsed without observing the marine mammal.
3. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones 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.
4. If a marine mammal is observed entering or within the shutdown zones, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in condition 3.
5. Furie 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.
6. Pile driving activity must be halted (as described in condition 4) 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.
7. Furie, construction supervisors and crews, PSOs, and relevant Furie 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.

Tugging Activities

8. Furie must establish clearance zones for all marine mammal species.
 - (i) For Cook Inlet beluga whale, Furie must establish a clearance zone that extends as far as PSOs can feasibly observe.
 - (ii) For all marine mammal species other than Cook Inlet beluga whale, Furie must establish a clearance zone that extends 1.5 km from the jack-up rig.
9. Prior to commencing new operational activities in daylight hours, or if there is a 30-minute lapse in operational activities, two NMFS-approved PSOs must observe the

clearance zones described in condition 8 for 30 minutes. Transitioning from towing to positioning without shutting down is not considered commencing an operational activity.

- (i) If no marine mammals are observed within the relevant clearance zone during those 30 minutes, activities may commence.
 - (ii) If a non-beluga marine mammal(s) is observed within the relevant clearance zone during those 30 minutes, operations may not commence until the PSO(s) observe that one of the following conditions is met, unless the delay interferes with the safety of working conditions:
 - A. The non-beluga animal(s) is outside of and on a path away from the clearance zone; or
 - B. For non-ESA-listed species, 15 minutes have elapsed without observing the marine mammal, or for ESA-listed species, 30 minutes have elapsed without observing the marine mammal.
 - (iii) If a beluga whale is observed within the relevant clearance zone during those 30 minutes, operations may not commence until the beluga whale(s) is no longer detected at any range and 30 minutes have elapsed without any observations of beluga whales.
- 10. Prior to commencing new operational activities in nighttime hours, or if there is a 30-minute lapse in operational activities in low/no-light conditions, two NMFS-approved PSOs must observe out to the greatest extent feasible while using night vision devices for 30 minutes (i.e., pre-clearance monitoring). Transitioning from towing to positioning without shutting down is not considered commencing an operational activity.
 - (i) If no marine mammals are observed during those 30 minutes, activities may commence.
 - (ii) If a marine mammal(s) is observed during those 30 minutes, operations may not commence until the PSO(s) observe that one of the following conditions is met, unless the delay interferes with the safety of working conditions:
 - A. The animal(s) is outside of the observable area, or
 - B. For non-ESA-listed species, 15 minutes have elapsed without observing the marine mammal, or for ESA-listed species, 30 minutes have elapsed without observing the marine mammal.
- 11. All monitoring must continue through 30 minutes post-completion of any operations each day, and after each stoppage of 30 minutes or greater.
- 12. Furie must conduct tug towing rig operations with a favorable tide unless human safety or equipment integrity are at risk.
- 13. Furie may only conduct tug towing rig activities at night if necessary to accommodate a favorable tide.
- 14. If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes have been reached, is observed approaching or within the clearance zone, tugging activities must be delayed if not already under load. Tugging activities must not resume until the commencement criteria in 8 or 9 have been met.
- 15. Furie must maneuver tugs such that they maintain a consistent speed (approximately 4 knots [7 km/hr]) and avoid multiple changes of speed and direction.

16. Furie must maintain a distance of at least 2.4 km from the mean lower-low water line of the Sustina River Delta (Beluga River to the Little Sustina River) between April 15 and November 15.

Helicopter Activities

17. Helicopters must transit at an altitude of 1,500 feet (457 meters) or higher, to the extent practicable, while adhering to Federal Aviation Administration flight rules (e.g., avoidance of cloud ceiling, etc.), excluding takeoffs and landing. If flights must occur at altitudes less than 1,500 feet due to environmental conditions, aircraft must make course adjustments, as needed, to maintain at least a 1,500- foot separation from all observed marine mammals. Helicopters must not hover or circle above marine mammals.

NMFS has determined that the required mitigation measures are sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals and their habitat, as required by the MMPA. In addition, Furie must fulfil the following monitoring and reporting requirements included in the IHAs:

- Submit monthly marine mammal monitoring reports to NMFS for all months in which tug towing, holding, or positioning of the jack-up rig occurs. Reports would include a summary of marine mammal species and behavioral observations, delays, and tugging activities completed. They also must include an assessment of the amount of tugging remaining to be completed, in addition to the number of beluga whales observed within estimated harassment zones to date.
- Submit a draft final summary report(s) on all monitoring conducted under the IHAs within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for a similar activity at the same location, whichever comes first. A final summary 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.
- The final summary report must contain the informational elements described in the Monitoring Plan and, at minimum, must include:
 - Dates and times (begin and end) of all marine mammal monitoring;
 - Activities occurring during each daily observation period, including:
 - PSO locations during marine mammal monitoring;
 - Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
 - Upon observation of a marine mammal, the following information:
 - Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
 - Time of sighting;
 - Identification of the animal(s) (e.g., genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

- Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Animal's closest point of approach and estimated time spent within the harassment zone;
- Description of any marine mammal behavioral observations (e.g., observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
 - Number of marine mammals detected within the harassment zones, by species; and
 - 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.
- Submit, all PSO data along with the final summary report;
- Report injured or dead marine mammals.

DETERMINATION

The CEQ NEPA regulations, 40 CFR § 1501.6, direct an agency to prepare a FONSI when the agency, based on the EA for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and the analysis contained in the supporting EA prepared for Furie's natural gas activities in Cook Inlet, Alaska, it is hereby determined that the issuance of two IHAs for the take of marine mammals incidental to Furie's project will not significantly impact the quality of the human environment. The Environmental Assessment for the Issuance of Incidental Harassment Authorizations for the Take of Marine Mammals Incidental to Furie Operating Alaska, LLC Natural Gas Activities in Cook Inlet, Alaska is hereby incorporated by reference. In addition, all beneficial and adverse impacts of the proposed action as well as mitigation measures have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

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