

governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for the purposes of implementing the NAAQS is established under the CAA.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified two tribal areas located within the Imperial County nonattainment area, which is the subject of this action proposing to determine the area attained the 2015 ozone NAAQS, but for emissions emanating from outside the United States. The EPA has invited the Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians to engage in government to government consultation in advance of our proposed action and intends to continue to communicate with the tribes as the Agency moves forward in developing a final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA’s evaluation of this issue is contained in the section of the preamble titled “Environmental Justice Considerations.”

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: August 4, 2022.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2022–17190 Filed 8–12–22; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 18**

[Docket No. FWS–R7–ES–2022–0025; FXES111607MRG01–212–FF07CMM00]

RIN 1018–BG05

**Marine Mammals; Incidental Take During Specified Activities: The Gulf of Alaska**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; availability of draft environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, in response to a request from the United States Coast Guard, propose to issue regulations authorizing the nonlethal, incidental, unintentional take by harassment of small numbers of northern sea otters during marine construction and pile driving in the Gulf of Alaska coastal waters. Take may result from marine construction and pile-driving activities. This proposed rule would authorize take by harassment only. No lethal take would be authorized. If this proposed rule is finalized, we will issue letters of authorization, upon request, for specific proposed activities in accordance with the final rule for a period of 5 years. Therefore, we request comments on these proposed regulations.

**DATES:** Comments on these proposed incidental take regulations and the accompanying draft environmental assessment will be accepted on or before September 14, 2022.

**Information collection requirements:** If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB, with a copy to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see “Information Collection” section below under **ADDRESSES**) by October 14, 2022.

**ADDRESSES:** *Document availability:* You may view this proposed rule, the associated draft environmental assessment, comments received, and other supporting material at <https://www.regulations.gov> under Docket No. FWS–R7–ES–2022–0025, or these

documents may be requested as described under **FOR FURTHER INFORMATION CONTACT**.

*Comment submission:* You may submit comments on the proposed rule and draft environmental assessment by one of the following methods:

- *Electronic submission:* Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2022-0025.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R7-ES-2022-0025, Policy and Regulations Branch, U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

*Information collection requirements:* Written comments and suggestions on the information collection requirements should be submitted within 60 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803 (mail); or [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) (email). Please reference “OMB Control Number 1018-0070” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Sierra Franks, Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road MS-341, Anchorage, AK 99503, Telephone 907-786-3844, or Email:

[R7mmmregulatory@fws.gov](mailto:R7mmmregulatory@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

In accordance with the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1371(a)(5)(A)) and its implementing regulations, we, the U.S.

Fish and Wildlife Service (hereafter Service or we), propose incidental take regulations (ITR) that if finalized would authorize the nonlethal, incidental, unintentional take of small numbers of northern sea otters (*Enhydra lutris kenyoni*; hereafter “otter,” “otters,” or “sea otters”) during marine construction and pile-driving activities in coastal waters surrounding eight United States Coast Guard (USCG) facilities in the Gulf of Alaska. If finalized, this proposed rule would be effective from the effective date of the final rule for a period of 5 years.

This proposed rule is based on our draft findings that the total takings of northern sea otters during proposed activities will impact small numbers of animals, will have a negligible impact on this species or stocks, and will not have an unmitigable adverse impact on the availability of this species for subsistence use by Alaska Natives. We base our draft findings on data from monitoring the encounters and interactions between this species; research on this species; potential and documented effects on this species from similar activities; information regarding the natural history and conservation status of northern sea otters; and data reported from Alaska Native subsistence hunters.

The proposed regulations include permissible methods of nonlethal taking; mitigation measures to ensure that the USCG’s activities will have the least practicable adverse impact on the species, their habitat, and the availability of this species for subsistence uses; and requirements for monitoring and reporting.

**Background**

Section 101(a)(5)(A) of the MMPA gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18 (at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the Service. According to the MMPA, the Service shall allow this incidental taking if we find that the total of such taking for the 5-year regulatory period:

(1) Will affect only small numbers of individuals of the species or stock;

(2) Will have no more than a negligible impact on the species or stock;

(3) Will not have an unmitigable adverse impact on the availability of the

species or stock for taking for subsistence use by Alaska Natives; and

(4) We issue regulations that set forth:

(a) Permissible methods of taking,

(b) Means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses, and

(c) Requirements for monitoring and reporting of such taking.

If final regulations allowing such incidental take are issued, we may then subsequently issue letters of authorization (LOAs), upon request, to authorize incidental take during the specified activities.

The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild” (the MMPA defines this as Level A harassment); or “(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering” (the MMPA defines this as Level B harassment).

The terms “negligible impact” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows: “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival; “Unmitigable adverse impact” means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with

“negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct requirements for promulgating ITRs under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. In promulgating ITRs, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of project activities, but they are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

The USCG’s marine construction and pile-driving activities may result in the incidental taking of sea otters. The MMPA does not require that the USCG must obtain incidental take authorization; however, any taking that occurs without authorization is a violation of the MMPA.

#### Summary of Request

The Service first received a request for ITRs from the USCG on July 2, 2021. The Service sent requests for additional information on August 12, September 13, and November 10, 2021, and February 10, 2022 and received updated versions of the petition from USCG on October 14, 2021, and January 18 and February 28, 2022, the latter of which was determined to be adequate and

complete. Several revisions were made involving animal presence, ensonified areas, number of days of operations, and mitigation and monitoring protocols. Geospatial files of the work sites were received on December 3, 2021. The Service used the February 2022 petition and December 2021 spatial files for analyses.

#### Description of the Proposed Regulations

The proposed regulations, if finalized, would authorize the nonlethal, incidental, unintentional take of small numbers of sea otters that may result from the proposed activities based on standards set forth in the MMPA. They would not authorize or “permit” activities, only the incidental take associated with those activities. The proposed regulations include:

- (1) Permissible methods of nonlethal taking;
- (2) Measures designed to ensure the least practicable adverse impact on sea otters and their habitat, and on the availability of this species for subsistence uses; and
- (3) Requirements for monitoring and reporting.

#### Description of Letters of Authorization (LOA)

An LOA is required to conduct activities pursuant to an ITR. Under this proposed ITR, if finalized, the USCG may request an LOA for the authorized nonlethal, incidental Level B harassment of sea otters incidental to the specific activities described in these proposed regulations. Requests for LOAs must be consistent with the activity descriptions and mitigation and

monitoring requirements of the ITR and be received in writing at least 30 days before the activity is to begin. Requests must include (1) an operational plan for the activity, including the number of days of work and the nature of work to be conducted; (2) a digital geospatial file of the project footprint; (3) estimates of the numbers of exposures of sea otters related to each project component; and (4) a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters. Once this information has been received, we will evaluate each request and issue the LOA if we find that the level of taking will be consistent with the findings made for the total taking allowable under the ITR. We must receive an after-action report on the monitoring and mitigation activities within 90 days after the LOA expires. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27(f).

#### Description of Specified Geographic Region

The specified geographic region covered by the requested ITRs (USCG ITR region (figure 1)) encompasses Gulf of Alaska (GOA) coastal waters, including State waters, within 2 kilometers (km) (~1.25 miles (mi)) of eight USCG facilities within the USCG Civil Engineering Unit Juneau Area of Responsibility. These facilities are: Base Kodiak, Moorings Seward, Moorings Valdez, Moorings Cordova, Moorings Sitka, Station Juneau, Moorings Petersburg, and Base Ketchikan.

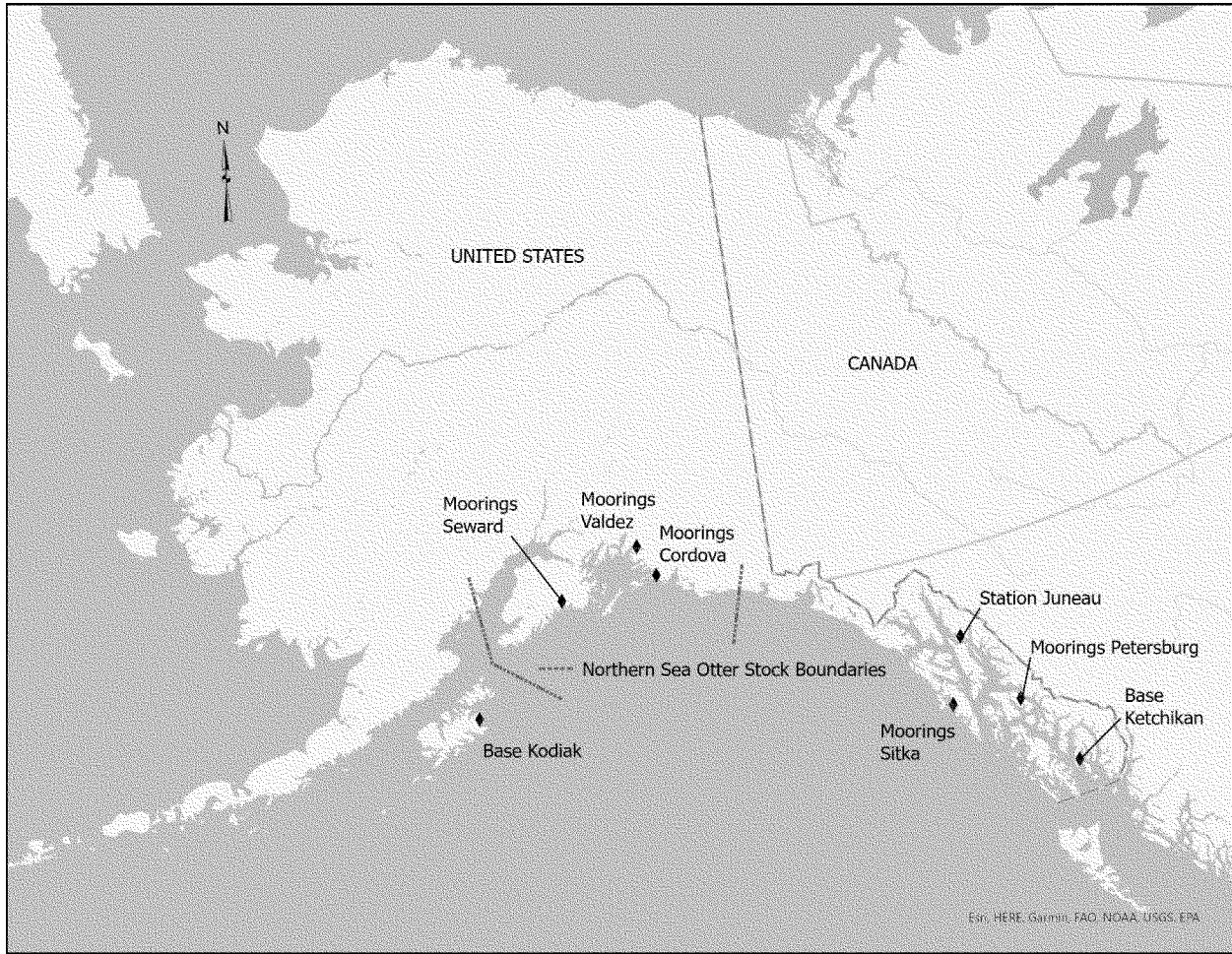


Figure 1. Map of Alaska showing USCG facilities at which proposed work is to take place. The base map image is the intellectual property of Esri and is used herein under license. Copyright © 2020 Esri and its licensors. All rights reserved.

**Description of Specified Activities**

The USCG will perform maintenance activities that will include pile repair (i.e., sleeve or jacket replacement), pile replacement (including removal and installation), and deck repair and replacement to maintain safe berthing for operating vessels. The in-water work will include impact pile driving of timber, steel, and concrete piles,

vibratory installation and extraction of timber, steel, and concrete piles, down-the-hole drilling, power washing of piles, use of an underwater hydraulic chainsaw, and pile clipping. The USCG will also conduct above-water maintenance activities, such as power washing of decks, fender repair (camel replacement, chain replacement, utility handlers), and replacement of rub strips and ladder supports.

Detailed descriptions of the proposed work are provided in the applicant’s request for ITRs for programmatic maintenance, repair, and replacement activities (February 2022) and the marine mammal monitoring and mitigation plan (January 2022). These documents can be obtained from the locations described above in **ADDRESSES**. Table 1 summarizes the planned activities.

**TABLE 1—SUMMARY OF PLANNED ACTIVITIES INCLUDED IN THE U.S. COAST GUARD APPLICATION FOR INCIDENTAL TAKE REGULATIONS**

Location	Year(s)	Number of piles	In-water activities	Type of piles	Number of days of activity per year	Total number of days of activity	
Kodiak .....	1–5	20 piles removed and 20 piles installed per year (100 total removed and 100 total installed); combination of steel and timber piles.	Vibratory extraction/in-	Timber .....	10	50	
			stallation.	Steel .....	10	50	
			Vibratory extraction/in-	Timber .....	10	50	
			stallation.				
			Clipper .....				
			Hydraulic chainsaw .....	Timber .....	10	50	
			Down-the-hole-drill .....	All types/sizes .....	10	50	

TABLE 1—SUMMARY OF PLANNED ACTIVITIES INCLUDED IN THE U.S. COAST GUARD APPLICATION FOR INCIDENTAL TAKE REGULATIONS—Continued

Location	Year(s)	Number of piles	In-water activities	Type of piles	Number of days of activity per year	Total number of days of activity
Sitka .....	1–5	5 piles removed and 5 piles installed per year (25 total removed and 25 total installed); combination of steel and timber piles.	Power washing .....	All types/sizes .....	5	25
			Vibratory extraction/installation.	Timber .....	5	25
			Vibratory extraction/installation.	Steel .....	5	25
Ketchikan .....	1–5	10 piles removed and 10 piles installed per year (50 total removed and 50 total installed); combination of steel and timber piles.	Impact driving .....	Timber .....	5	25
			Impact driving .....	Steel .....	5	25
			Power washing .....	All types/sizes .....	10	50
			Vibratory extraction/installation.	Timber .....	10	50
			Vibratory extraction/installation.	Steel .....	10	50
Valdez .....	1–5	1 pile removed and 1 pile installed per year, except for year 4 when 2 piles are to be removed and 2 installed (6 total removed and 6 total installed); combination of steel and timber piles.	Down-the-hole drill .....	All types/sizes .....	10	50
	1–5		Power washing .....	All types/sizes .....	2	10
	1–5		Vibratory extraction/installation.	Timber .....	2	10
	1–5		Impact driving .....	Steel .....	2	10
	1–5		Impact driving .....	Timber .....	1	5
Cordova .....	2	3 steel piles removed and 3 steel piles installed.	Vibratory extraction/installation.	Steel .....	1	5
			Impact driving .....	Steel .....	6	6
Juneau .....	1–5	10 timber piles removed and 10 timber piles installed per year (50 total removed and 50 total installed).	Impact driving .....	Steel .....	6	6
			Power washing .....	All types/sizes .....	10	50
			Vibratory extraction/installation.	Timber .....	10	50
Petersburg .....	1–5	2 piles removed and 2 piles installed per year (10 total removed and 10 total installed); combination of timber and steel piles.	Impact driving .....	Timber .....	10	50
			Power washing .....	All types/sizes .....	4	20
			Vibratory extraction/installation.	Timber .....	4	20
			Vibratory extraction/installation.	Steel .....	4	20
			Impact driving .....	Timber .....	4	20
Seward .....	3	1 steel pile removed and 1 steel pile installed	Impact driving .....	Steel .....	4	20
			Impact driving .....	Steel .....	4	20
			Vibratory extraction/installation.	Steel .....	4	4
			Impact driving .....	Steel .....	4	4

**Description of Marine Mammals in the Specified Geographic Region**

*Sea Otter Biology*

There are three sea otter stocks in Alaska: Southeast Alaska stock, Southcentral Alaska stock, and the Southwest Alaska stock. All three stocks are represented in the project area. Sea otters at Base Kodiak belong to the Southwest Alaska stock. Moorings Seward, Moorings Valdez, and Moorings Cordova lie within the range of the Southcentral Alaska stock. Moorings Sitka, Station Juneau, Moorings Petersburg, and Base Ketchikan lie within the range of the Southeast Alaska stock. Detailed information about the biology of these stocks can be found in the most recent stock assessment reports for the Southwest Alaska, Southcentral Alaska, and Southeast Alaska stocks (USFWS 2014a, b, c), which can be found at <https://fws.gov/project/marine-mammal-stock-assessment-reports> and were announced in the **Federal Register** at 79 FR 22154, April 21, 2014. Additional information on the Southwest Alaska stock is available in the species status assessment available

at <https://ecos.fws.gov/ecp/species/2884>.

Sea otters may be distributed anywhere within the specified project area other than upland areas; however, they generally occur in shallow water near the shoreline. They are most commonly observed within the 40-meter (m) (131-foot[ft]) depth contour (USFWS 2014a, b, c), although they can be found in areas with deeper water. Ocean depth is generally correlated with distance to shore, and sea otters typically remain within 1 to 2 km (0.62 to 1.24 mi) of shore (Riedman and Estes 1990). They tend to be found closer to shore during storms, but venture farther out during good weather and calm seas (Lensink 1962; Kenyon 1969).

Sea otters are nonmigratory and generally do not disperse over long distances (Garshelis and Garshelis 1984), usually remaining within a few kilometers of their established feeding grounds (Kenyon 1981). Breeding males stay for all or part of the year in a breeding territory covering up to 1 km (0.62 mi) of coastline, while adult females maintain home ranges of approximately 8 to 16 km (5 to 10 mi),

which may include one or more male territories. Juveniles move greater distances between resting and foraging areas (Lensink 1962; Kenyon 1969; Riedman and Estes 1990; Tinker and Estes 1996). Although sea otters generally remain local to an area, they are capable of long-distance travel. Sea otters in Alaska have shown daily movement distances greater than 3 km (1.9 mi) at speeds up to 5.5 km per hour (hr) (km/hr; 3.4 mi/hr) (Garshelis and Garshelis 1984).

*Southeast Alaska Sea Otter Stock*

The Southeast Alaska sea otter stock boundaries include Dixon Entrance Strait at the U.S.–Canada border to the south and Cape Yakataga, Alaska, to the north (USFWS 2014a, b, c). However, the largest abundances of sea otters in Southeast Alaska are found in the northern part of this range and expanding south to east (Tinker et al. 2019).

The Service conducted large-scale surveys in cooperation with the U.S. Geological Survey in 2003 and 2010 in southern Southeast Alaska (from Kake to Duke Island and Cape Chacon) and in

2002 and 2011 in northern Southeast Alaska (from Icy Point to Cape Ommaney). In these aerial surveys, transects were flown over high-density otter habitat (<40 m [131 ft] ocean depth) with a spacing of 2 km (1.2 mi) between transects and low-density otter habitat (40 to 100 m [131 to 328 ft] ocean depth) with a spacing of 8 km (5 mi) between transects.

This survey data has been incorporated into a spatiotemporal model of ecological diffusion using a Bayesian hierarchical framework (Eisaguirre et al. 2021). This model was used to develop the most recent estimate of 26,347 otters in the Southeast Alaska stock, and generated otter abundance estimates at a resolution of 400 m by 400 m. Abundance values within the project area ranged from 0.1 to 0.3 otters per 0.16 square kilometer (km<sup>2</sup>) (0.062 square miles [mi<sup>2</sup>]). Distribution of the population during the proposed project is likely to be similar to that detected during sea otter surveys, as work will occur during the same time of the year that these surveys were conducted.

#### *Southcentral Alaska Sea Otter Stock*

The Southcentral Alaska sea otter stock occurs in the center of the sea otter range in Alaska and extends from Cape Yakataga in the east to Cook Inlet in the west, including Prince William Sound, the eastern Kenai Peninsula coast, and Kachemak Bay (USFWS 2014a, b, c). Between 2014 and 2019, aerial surveys have been conducted in three regions of the Southcentral Alaska sea otter stock: (1) Eastern Cook Inlet, (2) Outer Kenai Peninsula, and (3) Prince William Sound by aerial transects flown at 91 m (298.56 ft) of altitude. The combined estimates of the three regions resulted in an approximate 21,617 (SE = 2,190) sea otters and an average density of 1.96 sea otters/km<sup>2</sup> for the Southcentral Alaska stock (Esslinger et al. 2021). We applied a density of 21.15 sea otters/km<sup>2</sup> at Moorings Cordova and 2.31 sea otters/km<sup>2</sup> at Valdez and Seward (Weitzman and Esslinger 2015).

#### *Southwest Alaska Sea Otter Stock*

The Southwest Alaska sea otter stock occurs from western Cook Inlet to Attu Island in the Aleutian chain (USFWS 2014a, b, c). The Southwest Alaska sea otter stock was listed as threatened under the Endangered Species Act (ESA) in 2005 as a distinct population segment (DPS) (70 FR 46366, August 9, 2005). This stock is divided into five management units (MUs): Western Aleutians; Eastern Aleutians; South Alaska Peninsula; Bristol Bay; and

Kodiak, Kamishak, and Alaska Peninsula (USFWS 2013). The specified geographic region occurs within the range of the Kodiak, Kamishak, and Alaska Peninsula MUs.

The range of the Kodiak, Kamishak, and Alaska Peninsula MUs extends from Castle Cape to Western Cook Inlet on the southern side of the Alaska Peninsula and also encompasses Kodiak Island (USFWS 2020). The specified geographic region is within the range of the sea otter population at Kodiak Archipelago. Waters surrounding Kodiak Island were surveyed in 2014 using the same methods described above for the surveys of the Southeast and Southcentral Alaska stocks (Cobb 2018). The estimate of sea otter density that resulted from these surveys is 2.54 animals per km<sup>2</sup>, which we used for the Kodiak site (Cobb 2018).

### **Potential Impacts of the Specified Activities on Marine Mammals**

#### *Effects of Noise on Sea Otters*

We characterized “noise” as sound released into the environment from human activities that exceeds ambient levels or interferes with normal sound production or reception by sea otters. The terms “acoustic disturbance” or “acoustic harassment” are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the distance of the sea otter from the sound source, the level and intensity of sound the sea otter receives, background noise levels, noise frequency, noise duration, and whether the noise is pulsed or continuous. The actual noise level perceived by individual sea otters will also depend on whether the sea otter is above or below water and atmospheric and environmental conditions. Temporary disturbance of sea otters or localized displacement reactions are the most likely effects to occur from noise exposure.

#### *Sea Otter Hearing*

Pile driving and marine construction activities will fall within the hearing range of sea otters. Controlled sound exposure trials on southern sea otters (*Enhydra lutris nereis*) indicate that sea otters can hear frequencies between 125 hertz (Hz) and 38 kilohertz (kHz) with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter’s hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than terrestrial mustelids but was

similar to that of a California sea lion (*Zalophus californianus*). However, the sea otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125–1 kHz were between 116–101 decibel (dB), respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane et al. 1995, Ghoul and Reichmuth 2012).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Unlike other marine mammals, sea otters do not rely on sound to orient themselves, locate prey, or communicate under water; therefore, masking of communications by anthropogenic sound is less of a concern than for other marine mammals. However, sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987).

#### *Exposure Thresholds*

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) to marine mammal species, including sea otters, have been established using the same methods as those used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a permanent shift in sensitivity of hearing (*i.e.*, a permanent threshold shift (PTS) (NMFS 2018)). PTS occurs when noise exposure causes hairs within the inner ear system to die (Ketten 2012).

Sound exposure thresholds incorporate two metrics of exposure: the peak level of instantaneous exposure likely to cause PTS and the cumulative sound exposure level (SEL<sub>cum</sub>) during a 24-hour period. They also include weighting adjustments for the sensitivity of different species to varying frequencies. PTS-based injury criteria were developed from theoretical extrapolation of observations of temporary threshold shifts (TTS) detected in lab settings during sound exposure trials (Finneran 2015). Southall and colleagues (2019) predict PTS for sea otters, which are included in the “other marine carnivores” category, will occur at 232 dB peak or 203 dB SEL<sub>cum</sub> for impulsive underwater sound and 219 dB SEL<sub>cum</sub> for nonimpulsive (continuous) underwater sound.

Thresholds based on TTS have been used as a proxy for Level B harassment (*i.e.*, 70 FR 1871, January 11, 2005; 71 FR 3260, January 20, 2006; 73 FR 41318, July 18, 2008). Southall et al. (2007) derived TTS thresholds for pinnipeds based on 212 dB peak and 171 dB SEL<sub>cum</sub>. Exposures resulting in TTS in pinnipeds were found to range from 152 to 174 dB (183 to 206 dB SEL) (Kastak et al. 2005), with a persistent TTS, if not a PTS, after 60 seconds of 184 dB SEL (Kastak et al. 2008). Kastelein et al. (2012) found small but statistically significant TTSs at approximately 170 dB SEL (136 dB, 60 minutes (min)) and 178 dB SEL (148 dB, 15 min). Based on these findings, Southall et al. (2019) developed TTS thresholds for sea otters, which are included in the “other marine carnivores” category, of 188 dB SEL<sub>cum</sub> for impulsive sounds and 199 dB SEL<sub>cum</sub> for nonimpulsive sounds.

NMFS (2018) criteria do not identify thresholds for avoidance of Level B harassment. For pinnipeds (seals and sea lions), NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulsive noise and a 120-dB threshold for continuous noise (NMFS 1998, HESS 1999, NMFS 2018). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (*e.g.*, Malme et al. 1983; Malme and Miles 1983; Richardson et al. 1986, 1995) and from equating Level B harassment with noise levels capable of causing TTS in lab settings. Southall et

al. (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses from pinnipeds in water. However, they found behavioral effects, including avoidance, become more likely in the range between 120 to 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 to 180 dB. Wood et al. (2012) adapted the approach identified in Southall et al. (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine mammals, including pinnipeds, these response rates were set at sound pressure levels of 140, 160, and 180 dB, respectively.

We have evaluated these thresholds and determined that the Level B threshold of 120 dB for nonimpulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies in which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise (Malme et al. 1983; Malme and Miles 1983). During these playback studies, southern sea otter responses to industrial noise were also monitored (Riedman 1983, 1984). Gray whales exhibited avoidance to industrial noise at the 120-dB threshold; however, there was no

evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the different range of frequencies to which sea otters and gray whales are sensitive, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses, particularly for low-frequency sound.

Based on the lack of sea otter disturbance response or any other reaction to the 1980’s playback studies and the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to continuous underwater noise.

Based on the best available scientific information about sea otters and closely related marine mammals when sea otter data are limited, the Service has set 160 dB of received underwater sound as a threshold for Level B harassment by disturbance for sea otters for these ITRs. Exposure to unmitigated in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and nonimpulsive sound sources—will be considered by the Service as Level B harassment. Thresholds for Level A harassment (which entails the potential for injury) will be 232 dB peak or 203 dB SEL for impulsive sounds and 219 dB SEL for continuous sounds (table 2).

TABLE 2—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR “OTHER MARINE CARNIVORES,” WHICH INCLUDES SEA OTTERS.

[Values are weighted for other marine carnivores’ hearing thresholds and given in cumulative sound exposure level (SEL<sub>CUM</sub> dB re (20 micropascal (μPa) in air and SEL<sub>CUM</sub> dB re 1 μPa in water) for impulsive and nonimpulsive sounds and unweighted peak sound pressure level (SPL) in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only)]

	TTS			PTS		
	Nonimpulsive	Impulsive		Nonimpulsive	Impulsive	
	SEL <sub>CUM</sub>	SEL <sub>CUM</sub>	Peak SPL	SEL <sub>CUM</sub>	SEL <sub>CUM</sub>	Peak SPL
Air .....	157	146	170	177	161	176
Water .....	199	188	226	219	203	232

**Airborne Sounds**

The NMFS (2018) guidance neither addresses thresholds for preventing injury or disturbance from airborne noise, nor provides thresholds for avoidance of Level B harassment. Southall et al. (2007) suggested thresholds for PTS and TTS for sea lions exposed to nonpulsed airborne noise of 172.5 and 159 dB re (20 μPa)<sup>2</sup>-s SEL. Conveyance of underwater noise into the air is of little concern since the

effects of pressure release and interference at the water’s surface reduce underwater noise transmission into the air. For activities that create both in-air and underwater sounds, we will estimate take based on parameters for underwater noise transmission. Considering sound energy travels more efficiently through water than through air, this estimation will also account for exposures to sea otters at the surface.

**Evidence From Sea Otter Studies**

Sea otters may be more resistant to the effects of sound disturbance and human activities than other marine mammals. For example, observers have noted no changes from southern sea otters in regard to their presence, density, or behavior in response to underwater sounds from industrial noise recordings at 110 dB and a frequency range of 50 Hz to 20 kHz and airguns, even at the closest distance of 0.5 nautical miles (<1

km or 0.6 mi) (Riedman 1983). Southern sea otters did not respond noticeably to noise from a single 1,638 cubic centimeters (cm<sup>3</sup>) (100 cubic inches [in<sup>3</sup>]) airgun, and no sea otter disturbance reactions were evident when a 67,006 cm<sup>3</sup> (4,089 in<sup>3</sup>) airgun array was as close as 0.9 km (0.6 mi) to sea otters (Riedman 1983, 1984).

However, southern sea otters displayed slight reactions to airborne engine noise (Riedman 1983). Northern sea otters were observed to exhibit a limited response to a variety of airborne and underwater sounds, including a warble tone, sea otter pup calls, calls from killer whales (*Orcinus orca*) (which are predators to sea otters), air horns, and an underwater noise harassment system designed to drive marine mammals away from crude oil spills (Davis et al. 1988). These sounds elicited reactions from northern sea otters, including startle responses and movement away from noise sources. However, these reactions were only observed when northern sea otters were within 100–200 m (328–656 ft) of noise sources. Further, northern sea otters appeared to become habituated to the noises within 2 hours or, at most, 3–4 days (Davis et al. 1988).

Noise exposure may be influenced by the amount of time sea otters spend at the water's surface. Noise at the water's surface can be attenuated by turbulence from wind and waves more quickly compared to deeper water, reducing potential noise exposure (Greene and Richardson 1988, Richardson et al. 1995). Additionally, turbulence at the water's surface limits the transference of sound from water to air. A sea otter with its head above water will be exposed to only a small fraction of the sound energy traveling through the water beneath it. The average amount of time that sea otters spend above the water each day while resting and grooming varies between males and females and across seasons (Esslinger et al. 2014, Zellmer et al. 2021). For example, female sea otters foraged for an average of 8.78 hours per day compared to male sea otters, which foraged for an average of 7.85 hours per day during the summer months (Esslinger et al. 2014). Male and female sea otters spend an average of 63 to 67 percent of their day at the surface resting and grooming during the summer months (Esslinger et al. 2014). Few studies have evaluated foraging times during the winter months. Garshelis et al. (1986) found that foraging times increased from 5.1 hours per day to 16.6 hours per day in the winter; however, Gelatt et al. (2002) did not find a significant difference in seasonal foraging times. It is likely that

seasonal variation is determined by seasonal differences in energetic demand and the quality and availability of prey sources (Esslinger et al. 2014). These findings suggest that the large portion of the day sea otters spend at the surface may help limit sea otters' exposure during noise-generating operations.

Sea otter sensitivity to industrial activities may be influenced by the overall level of human activity within the sea otter population's range. In locations that lack frequent human activity, sea otters appear to have a lower threshold for disturbance. Sea otters in Alaska exhibited escape behaviors in response to the presence and approach of vessels (Udevitz et al. 1995). Behaviors included diving or actively swimming away from a vessel, sea otters on haulouts entering the water, and groups of sea otters disbanding and swimming in multiple different directions (Udevitz et al. 1995). Sea otters in Alaska were also observed to avoid areas with heavy boat traffic, in the summer, and return to these areas during seasons with less vessel traffic (Garshelis and Garshelis 1984). In Cook Inlet, sea otters drifting on a tide trajectory that would have taken them within 500 m (0.3 mi) of an active offshore drilling rig were observed to swim in order to avoid a close approach of the drilling rig despite near-ambient noise levels (BlueCrest 2014).

Individual sea otters in the coastal waters of the GOA will likely show a range of responses to noise from pile-driving activities. Some sea otters will likely show startle responses, change direction of travel, dive, or prematurely surface. Sea otters reacting to pile-driving activities may divert time and attention from biologically important behaviors, such as feeding and nursing pups. Sea otter responses to disturbance can result in energetic costs, which increases the amount of prey required by sea otters (Barrett 2019). This increased prey consumption may impact sea otter prey availability and cause sea otters to spend more time foraging and less time resting (Barrett 2019). Some sea otters may abandon the project area and return when the disturbance has ceased. Based on the observed movement patterns of sea otters (*i.e.*, Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990; Tinker and Estes 1996), we expect some individuals will respond to pile-driving activities by dispersing to nearby areas of suitable habitat; however, other sea otters, especially territorial adult males, are less likely to be displaced.

### *Consequences of Disturbance*

The reactions of wildlife to disturbance can range from short-term behavioral changes to long-term impacts that affect survival and reproduction. When disturbed by noise, animals may respond behaviorally (*e.g.*, escape response) or physiologically (*e.g.*, increased heart rate, hormonal response) (Harms et al. 1997; Tempel and Gutiérrez 2003). The energy expense and associated physiological effects could ultimately lead to reduced survival and reproduction (Gill and Sutherland 2000; Frid and Dill 2002). For example, South American sea lions (*Otaria byronia*) visited by tourists exhibited an increase in the state of alertness and a decrease in maternal attendance and resting time on land, thereby potentially reducing population size (Pavez et al. 2015). In another example, killer whales that lost feeding opportunities due to boat traffic faced a substantial (18 percent) estimated decrease in energy intake (Williams et al. 2006). Such disturbance effects can have population-level consequences. Increased disturbance rates have been associated with a decline in abundance of bottlenose dolphins (*Tursiops* spp.) (Bejder et al. 2006; Lusseau et al. 2006).

These examples illustrate direct effects on survival and reproductive success, but disturbances can also have indirect effects. Response to noise disturbance is considered a nonlethal stimulus that is similar to an antipredator response (Frid and Dill 2002). Sea otters are susceptible to predation, particularly from killer whales and eagles, and have a well-developed antipredator response to perceived threats. For example, the presence of a harbor seal (*Phoca vitulina*) did not appear to disturb southern sea otters, but they demonstrated a fear response in the presence of a California sea lion by actively looking above and beneath the water (Limbaugh 1961).

Although an increase in vigilance or a flight response is nonlethal, a tradeoff occurs between risk avoidance and energy conservation. An animal's reactions to noise disturbance may cause stress and direct an animal's energy away from fitness-enhancing activities such as feeding and mating (Frid and Dill 2002; Goudie and Jones 2004). For example, southern sea otters in areas with heavy recreational boat traffic demonstrated changes in behavioral time budgeting, showing decreased time resting and changes in haulout patterns and distribution (Benham 2006; Maldini et al. 2012). Chronic stress can also lead to



weakened reflexes, lowered learning responses (Welch and Welch 1970; van Polanen Petel et al. 2006), compromised immune function, decreased body weight, and abnormal thyroid function (Selye 1979).

Changes in behavior resulting from anthropogenic disturbance can include increased agonistic interactions between individuals or temporary or permanent abandonment of an area (Barton et al. 1998). Additionally, the extent of previous exposure to humans (Holcomb et al. 2009), the type of disturbance (Andersen et al. 2012), and the age or sex of the individuals (Shaughnessy et al. 2008; Holcomb et al. 2009) may influence the type and extent of response in individual sea otters.

#### *Vessel Activities*

Vessel collisions with marine mammals can result in death or serious injury. Wounds resulting from vessel strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus 2001). An animal may be harmed by a vessel when the vessel runs over the animal at the surface, the animal hits the bottom of a vessel while the animal is surfacing, or the animal is cut by a vessel's propeller.

Vessel strike has been documented as a cause of death across all three stocks of northern sea otters in Alaska. Since 2002, the Service has conducted 1,433 sea otter necropsies to determine cause of death, disease incidence, and the general health status of sea otters in Alaska. Vessel strike or blunt trauma was identified as a definitive or presumptive cause of death in 65 cases (4 percent) (USFWS 2020). In most of these cases, trauma was determined to be the ultimate cause of death; however, there was a contributing factor, such as disease or biotoxin exposure, which incapacitated the sea otter and made it more vulnerable to vessel strike (USFWS 2014 a, b, c).

Vessel speed influences the likelihood of vessel strikes involving sea otters. The probability of death or serious injury to a marine mammal increases as vessel speed increases (Laist et al. 2001, Vanderlaan and Taggart 2007). Sea otters spend a considerable portion of their time at the water's surface (Esslinger et al. 2014). They are typically visually aware of approaching vessels and can move away if a vessel is not traveling too quickly. Mitigation measures to be applied to vessel operations to prevent collisions or interactions are included below in the rule portion of this document under proposed § 18.149 Mitigation.

Sea otters exhibit behavioral flexibility in response to vessels, and their responses may be influenced by the intensity and duration of the vessel's activity. As noted above, sea otter populations in Alaska were observed to avoid areas with heavy vessel traffic but return to those same areas during seasons with less vessel traffic (Garshelis and Garshelis 1984). Sea otters have also shown signs of disturbance or escape behaviors in response to the presence and approach of survey vessels including sea otters diving and/or actively swimming away from a vessel, sea otters on haulouts entering the water, and groups of sea otters disbanding and swimming in multiple different directions (Udevitz et al. 1995).

Additionally, sea otter responses to vessels may be influenced by the sea otter's previous experience with vessels. Groups of southern sea otters in two locations in California showed markedly different responses to kayakers approaching to within specific distances, suggesting a different level of tolerance between the groups (Gunvalson 2011). Benham (2006) found evidence that the sea otters exposed to high levels of recreational activity may have become more tolerant than individuals in less-disturbed areas. Sea otters off the California coast showed only mild interest in vessels passing within hundreds of meters and appeared to have habituated to vessel traffic (Riedman 1983, Curland 1997). These findings indicate that sea otters may adjust their responses to vessel activities depending on the level of activity. Vessels will not be used extensively or over a long duration during the proposed work; therefore, we do not anticipate that sea otters will experience changes in behavior indicative of tolerance or habituation.

#### *Effects on Sea Otter Habitat and Prey*

Physical and biological features of habitat essential to the conservation of sea otters include the benthic invertebrates that sea otters eat and the shallow rocky areas and kelp beds that provide cover from predators. Important sea otter habitat in the project area includes coastal areas within the 40-m (131-ft) depth contour where high densities of sea otters have been detected.

Industrial activities, such as pile driving, may generate in-water noise at levels that can temporarily displace sea otters from important habitat and impact sea otter prey species. The primary prey species for sea otters are sea urchins (*Strongylocentrotus* spp. and *Mesocentrotus* spp.), abalone

(*Haliotis* spp.), clams (e.g., *Clinocardium nuttallii*, *Leukoma staminea*, and *Saxidomus gigantea*), mussels (*Mytilus* spp.), crabs (e.g., *Metacarcinus magister*, *Pugettia* spp., *Telemessus cheiragonus*, and *Cancer* spp.), and squid (*Loligo* spp.) (Tinker and Estes 1996, LaRoche et al. 2021). When preferential prey are scarce, sea otters will also eat kelp, slow-moving benthic fishes, sea cucumbers (e.g., *Apostichopus californicus*), egg cases of rays, turban snails (*Tegula* spp.), octopuses (e.g., *Octopus* spp.), barnacles (*Balanus* spp.), sea stars (e.g., *Pycnopodia helianthoides*), scallops (e.g., *Patinopecten caurinus*), rock oysters (*Saccostrea* spp.), worms (e.g., *Eudistylia* spp.), and chitons (e.g., *Mopalia* spp.) (Riedman and Estes 1990, Davis and Bodkin 2021).

Several studies have addressed the effects of noise on invertebrates (Tidau and Briffa 2016, Carroll et al. 2017). Behavioral changes, such as an increase in lobster (*Homarus americanus*) feeding levels (Payne et al. 2007), an increase in avoidance behavior by wild-caught captive reef squid (*Sepioteuthis australis*) (Fewtrell and McCauley 2012), and deeper digging by razor clams (*Sinonovacula constricta*) (Peng et al. 2016) have been observed following experimental exposures to sound. Physical changes have also been observed in response to increased sound levels, including changes in serum biochemistry and hepatopancreatic cells in lobsters (Payne et al. 2007) and long-term damage to the statocysts required for hearing in several cephalopod species (André et al. 2011, Solé et al. 2013). De Soto et al. (2013) found impaired embryonic development in scallop (*Pecten novaezelandiae*) larvae when exposed to 160 dB. Christian et al. (2003) noted a reduction in the speed of egg development of bottom-dwelling crabs following exposure to noise; however, the sound level (221 dB at 2 m or 6.6 ft) was far higher than the proposed project activities will produce. Industrial noise can also impact larval settlement by masking the natural acoustic settlement cues for crustaceans and fish (Pine et al. 2012, Simpson et al. 2016, Tidau and Briffa 2016).

While these studies provide evidence of deleterious effects to invertebrates as a result of increased sound levels, Carroll et al. (2017) caution that there is a wide disparity between results obtained in field and laboratory settings. In experimental settings, changes were observed only when animals were housed in enclosed tanks and many were exposed to prolonged bouts of continuous, pure tones. We would not expect similar results in open marine

conditions. It is unlikely that noises generated by project activities will have any lasting effect on sea otter prey given the short-term duration of sounds produced by each component of the proposed work.

Noise-generating activities that interact with the seabed can produce vibrations, resulting in the disturbance of sediment and increased turbidity in the water. Although turbidity is likely to have little impact on sea otters and prey species (Todd et al. 2015), there may be some impacts from vibrations and increased sedimentation. For example, mussels (*Mytilus edulis*) exhibited changes in valve gape and oxygen demand, and hermit crabs (*Pagurus bernhardus*) exhibited limited behavioral changes in response to vibrations caused by pile driving

(Roberts et al. 2016). Increased sedimentation is likely to reduce sea otter visibility, which may result in reduced foraging efficiency and a potential shift to less-preferred prey species. These outcomes may cause sea otters to spend more energy on foraging or processing the prey items; however, the impacts of a change in energy expenditure are not likely seen at the population level (Newsome et al. 2015). Additionally, the benthic invertebrates may be impacted by increased sedimentation, resulting in higher abundances of opportunistic species that recover quickly from industrial activities that increase sedimentation (Kotta et al. 2009). Although sea otter foraging could be impacted by industrial activities that cause vibrations and

increased sedimentation, it is more likely that sea otters would be temporarily displaced from the project area due to impacts from noise rather than vibrations and sedimentation.

**Potential Impacts of the Specified Activities on Subsistence Uses**

The proposed specified activities will occur near marine subsistence harvest areas used by Alaska Natives from areas surrounding the USCG facilities in Kodiak, Sitka, Ketchikan, Valdez, Cordova, Juneau, Petersburg, and Seward.

Table 3 shows the numbers of sea otters taken by subsistence hunting between 2017 and 2021 in the communities in which the specified activities are proposed.

**TABLE 3—SUBSISTENCE HUNTING TOTALS AND AVERAGES OF SEA OTTERS FROM 2017 TO 2021 IN THE COMMUNITIES OF THE PROPOSED MARINE CONSTRUCTION AND PILE-DRIVING ACTIVITIES**

Village	2017	2018	2019	2020	2021	Total	Average (rounded to nearest whole number)
Cordova .....	75	50	40	49	67	281	56
Juneau .....	10	10	19	89	12	140	28
Ketchikan .....	0	1	12	35	89	137	27
Kodiak .....	59	14	58	10	51	192	38
Petersburg .....	27	27	0	37	0	91	18
Seward .....	0	0	0	0	0	0	0
Sitka .....	341	161	231	86	137	956	191
Valdez .....	36	19	34	6	2	97	19

Subsistence harvest of sea otters around Kodiak Island takes place primarily in Ouzinkie, Kodiak, and Port Lions with totals of 422, 192, and 130 sea otters taken, respectively, from 2017 through 2021. Subsistence harvest also occurs in Akhiok, Larsen Bay, and Old Harbor, with a total of 26 sea otters taken in those 3 communities over the same time period.

Of the communities on the Admiralty, Baranof, and Chichagof Islands, most subsistence harvest of sea otters occurs in Sitka. From 2017 through 2021, subsistence hunters took 956 sea otters in Sitka, averaging 191 per year. A combined total of 304 sea otters were taken during that time from Port Alexander, Angoon, Hoonah, and Pelican, with an average of 61 sea otters harvested per year from all those communities combined.

The majority of sea otter harvests in the Ketchikan area occur in the communities on Prince of Wales Island. From 2017 to 2021, Coffman Cove, Craig, Hydaburg, and Klawock harvested a total of 772 sea otters. During that time, 137 otters were taken for subsistence use in Ketchikan.

Subsistence harvest of sea otters also occurs in Metlakatla, though there were no documented takes between 2017 and 2019 and 57 total between 2020 and 2021.

The subsistence use of sea otters in Valdez and Cordova has averaged 19 and 56 per year, respectively, from 2017 through 2021. In the surrounding area, Tatitlek has harvested an average of 6 sea otters per year for a total of 32 during that time.

Among Juneau and the surrounding communities, Hoonah takes the most sea otters by subsistence hunting. From 2017 through 2021, subsistence users in Hoonah took 275 otters, averaging 55 per year. In comparison, 140 sea otters were harvested in Juneau during that time. Angoon and Haines also take sea otters for subsistence, but in much smaller numbers. Angoon took 6 sea otters between 2017 and 2021, and all were harvested in 2018; Haines took 10 total during that time period, averaging 2 per year.

The majority of subsistence sea otter hunting in the Petersburg area takes place in the neighboring communities of Kake and Wrangell. Petersburg averaged

18 sea otters taken per year between 2017 and 2021. Kake had a total of 612 and averaged 122 annually, and Wrangell totaled 211 and averaged 42 per year over that timeframe.

No subsistence harvest of sea otters has been documented in Seward since 2017. The nearby community of Chenega Bay has no documented harvest of sea otters since 2018, and only six sea otters were harvested in 2017.

As all work sites are active USCG facilities, the proposed project does not overlap with current subsistence harvest areas. Construction activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. Furthermore, most USCG facilities are within developed areas and city limits, where firearm use is prohibited. Despite no conflict with subsistence use being anticipated, the Service will be conducting outreach with potentially affected communities to see whether there are any questions, concerns, or potential conflicts regarding subsistence use in those areas. If any conflicts are identified in the future, USCG will develop a plan of

cooperation specifying the particular steps necessary to minimize any effects the project may have on subsistence harvest.

**Estimated Take**

*Definitions of Incidental Take Under the Marine Mammal Protection Act*

Below we provide definitions of three potential types of take of sea otters. The Service does not anticipate and is not authorizing lethal take or take by Level A harassment as a part of the proposed rule; however, the definitions of these take types are provided for context and background:

**Lethal Take**—Human activity may result in biologically significant impacts to sea otters. In the most serious interactions, human actions can result in mortality of sea otters.

**Level A Harassment**—Human activity may result in the injury of sea otters. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

**Level B Harassment**—Level B Harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Changes in behavior that disrupt biologically significant behaviors or activities for the affected animal are indicative of take by Level B harassment under the MMPA.

The Service has identified the following sea otter behaviors as indicating possible Level B harassment:

- Swimming away at a fast pace on belly (*i.e.*, porpoising);

- Repeatedly raising the head vertically above the water to get a better view (spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother’s head;
- Abandoning prey or feeding area;
- Ceasing to nurse and/or rest (applies to dependent pups);
- Ceasing to rest (applies to independent animals);
- Ceasing to use movement corridors;
- Ceasing mating behaviors;
- Shifting/jostling/agitation in a raft so that the raft disperses;
- Sudden diving of an entire raft; or
- Flushing animals off a haulout.

This list is not meant to encompass all possible behaviors; other behavioral responses may equate to take by Level B harassment. Relatively minor changes in behavior such as increased vigilance or a short-term change in direction of travel are not likely to disrupt biologically important behavioral patterns, and the Service does not view such minor changes in behavior as indicative of a take by Level B harassment. It is also important to note that, depending on the duration, frequency, or severity of the above-described behaviors, such responses could constitute take by Level A harassment.

**Calculating Take**

We assumed all animals exposed to underwater sound levels that meet the acoustic exposure criteria defined above in *Exposure Thresholds* will experience take by Level B harassment due to exposure to underwater noise. Spatially explicit zones of ensonification were established around the proposed construction location to estimate the number of otters that may be exposed to these sound levels. We determined the number of otters present in the ensonification zones using density

information generated by Eisaguirre et al. (2021), Weitzman and Esslinger (2015), and Cobb (2018).

The project can be divided into five major components: rock socket drilling, vibratory hammering, pile cutting or clipping, power washing, and pile driving using an impact driver. Each of these components will generate a different type of in-water noise. Vibratory hammering, pile cutting, and power washing will produce nonimpulsive or continuous noise; impact driving will produce impulsive noise; and down-the-hole rock socket drilling is considered to produce both impulsive and continuous noise (NMFS 2020).

The level of sound anticipated from each project component was established using recorded data from several sources listed in tables 4 through 11. The NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) was used to determine the distance at which sound levels would attenuate to Level A harassment thresholds, and empirical data from the proxy projects were used to determine the distance at which sound levels would attenuate to Level B harassment thresholds (table 2). The weighting factor adjustment included in the NMFS user spreadsheet accounts for sound created in portions of an organism’s hearing range where they have less sensitivity. We used the weighting factor adjustment for otariid pinnipeds as they are the closest available physiological and anatomical proxy for sea otters. The spreadsheet also incorporates a transmission loss coefficient, which accounts for the reduction in sound level outward from a sound source. We used the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities to indicate simple spread (NMFS 2020).

**TABLE 4—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG BASE KODIAK**

Sound source	Down-the-hole drilling	Vibratory extraction/installation		Clipper timber piles	Hydraulic chainsaw timber piles
		Timber piles	Steel piles		
Sound level .....	159 dB SEL <sub>s-s</sub> (167 dB re 1µPa RMS SPL mean maximum at 10 m).	153 dB re 1µPa RMS SPL mean maximum at 10 m.	162 dB re 1µPa RMS SPL mean maximum at 10 m.	153.8 dB re 1µPa RMS SPL mean maximum at 10 m.	151 dB re 1µPa RMS SPL mean maximum at 10 m.
Source .....	Heyvaert and Reyff 2021.	Greenbusch Group 2018.	Laughlin 2010; WSDOT 2020.	NAVFAC SW 2020 ...	NAVFAC SW 2020.
Timing per pile .....	60 minutes/pile; 36,000 strikes/pile.	10 minutes/pile .....	10 minutes/pile .....	2.4 minutes/pile .....	4.8 minutes/pile.
Maximum piles per day.	2 .....	5 .....	5 .....	5 .....	5.

TABLE 4—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG BASE KODIAK—Continued

Sound source	Down-the-hole drilling	Vibratory extraction/installation		Clipper timber piles	Hydraulic chainsaw timber piles
		Timber piles	Steel piles		
Number of days of activity per year.	10 .....	10 .....	10 .....	10 .....	10.
Total number of days of activity (5-year duration).	50 .....	50 .....	50 .....	50 .....	50.
Distance to below Level A harassment threshold.	16.9 meters .....	0.1 meters .....	0.3 meters .....	0.0 meters .....	0.0 meters.
Distance to below Level B harassment threshold.	29 meters .....	3 meters .....	14 meters .....	4 meters .....	3 meters.
Sea otter density .....	2.54/km <sup>2</sup>				
Level B area (km <sup>2</sup> ) .....	0.002557 .....	0.000028 .....	0.000613 .....	0.00005 .....	0.000028.
Potential sea otters affected by sound per day.	0.0064958 .....	0.0000717 .....	0.0015562 .....	0.0001270 .....	0.0000717.
Potential sea otters affected by sound per day (rounded).	0 .....	0 .....	0 .....	0 .....	0.
Requested harassment events per year.	1 .....	1 .....	1 .....	1 .....	1.
Requested total harassment events (5-year duration).	5 .....	5 .....	5 .....	5 .....	5.

TABLE 5—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS SITKA

Sound source	Impact driver		Vibratory extraction/installation		Power washing
	Timber piles	Steel piles	Timber piles	Steel piles	
Sound level .....	160 dB SEL <sub>s-s</sub> (170 dB re 1μPa RMS SPL mean maximum at 10 m).	177 dB SEL <sub>s-s</sub> (190 dB re 1μPa RMS SPL mean maximum at 10 m).	153 dB re 1μPa RMS SPL mean maximum at 10 m.	162 dB re 1μPa RMS SPL mean maximum at 10 m.	161 dB re 1μPa RMS SPL mean maximum at 10 m.
Source .....	Caltrans 2020; WSDOT 2020.	Yurk et al. 2015 .....	Greenbusch Group 2018.	Laughlin 2010; WSDOT 2020.	Austin 2017; 84 FR 12336, April 1, 2019.
Timing per pile .....	30 minutes/pile; 100 strikes/pile.	400 strikes/pile .....	10 minutes/pile .....	10 minutes/pile .....	30 minutes/pile.
Maximum piles per day.	5 .....	1 .....	5 .....	5 .....	5.
Number of days of activity per year.	5 .....	5 .....	5 .....	5 .....	5.
Total number of days of activity.	25 .....	25 .....	25 .....	25 .....	25.
Distance to below Level A harassment threshold.	0.7 meters .....	8.4 meters .....	0.1 meters .....	0.3 meters .....	0.1 meters.
Distance to below Level B harassment threshold.	46 meters .....	1,000 meters .....	3 meters .....	14 meters .....	12 meters.
Sea otter abundance in Level B area.	0.179174 .....	1.593015 .....	0.179174 .....	0.179174 .....	0.179174.
Potential sea otters affected by sound per day (rounded).	1 .....	2 .....	1 .....	1 .....	1.
Potential harassment events per year.	5 .....	10 .....	5 .....	5 .....	5.

TABLE 5—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS SITKA—Continued

Sound source	Impact driver		Vibratory extraction/installation		Power washing
	Timber piles	Steel piles	Timber piles	Steel piles	
Potential total harassment events (5-year duration).	25	50	25	25	25.

TABLE 6—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG BASE KETCHIKAN

Sound source	Down-the-hole drilling	Vibratory extraction/installation		Power washing
		Timber piles	Steel piles	
Sound level	159 dB SEL <sub>s-s</sub> (167 dB re 1μPa RMS SPL mean maximum at 10 m).	153 dB re 1μPa RMS SPL mean maximum at 10 m.	162 dB re 1μPa RMS SPL mean maximum at 10 m.	161 dB re 1μPa RMS SPL mean maximum at 10 m.
Source	Heyvaert and Reyff 2021 ..	Greenbusch Group 2018 ..	Laughlin 2010; WSDOT 2020.	Austin 2017; 84 FR 12336, April 1, 2019.
Timing per pile	60 minutes/pile; 36,000 strikes/pile.	10 minutes/pile	10 minutes/pile	30 minutes/pile.
Maximum piles per day	2	5	5	5.
Number of days of activity per year.	10	10	10	10.
Total number of days of activity.	50	50	50	50.
Distance to below Level A harassment threshold.	16.9 meters	0.1 meters	0.3 meters	0.1 meters.
Distance to below Level B harassment threshold.	29 meters	3 meters	14 meters	12 meters.
Sea otter abundance in Level B area.	0.475403	0.254697	0.254697	0.254697.
Potential sea otters affected by sound per day (rounded).	1	1	1	1.
Potential harassment events per year.	10	10	10	10.
Potential total harassment events (5-year duration).	50	50	50	50.

TABLE 7—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS VALDEZ

Sound source	Impact driver		Vibratory extraction/installation		Power washing
	Timber piles	Steel piles	Timber piles	Steel piles	
Sound level	160 dB SEL <sub>s-s</sub> (170 dB re 1μPa RMS SPL mean maximum at 10 m).	177 dB SEL <sub>s-s</sub> (190 dB re 1μPa RMS SPL mean maximum at 10 m).	153 dB re 1μPa RMS SPL mean maximum at 10 m.	162 dB re 1μPa RMS SPL mean maximum at 10 m.	161 dB re 1μPa RMS SPL mean maximum at 10 m.
Source	Caltrans 2020; WSDOT 2020.	Yurk et al. 2015	Greenbusch Group 2018.	Laughlin 2010; WSDOT 2020.	Austin 2017; 84 FR 12336, April 1, 2019.
Timing per pile	30 minutes/pile; 100 strikes/pile.	400 strikes/pile	10 minutes/pile	10 minutes/pile	30 minutes/pile.
Maximum piles per day.	5	1	5	5	5.
Number of days of activity per year.	1	1	2	2	2.
Total number of days of activity.	5	5	10	10	10.

TABLE 7—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS VALDEZ—Continued

Sound source	Impact driver		Vibratory extraction/installation		Power washing
	Timber piles	Steel piles	Timber piles	Steel piles	
Distance to below Level A harassment threshold.	0.7 meters .....	8.4 meters .....	0.1 meters .....	0.3 meters .....	0.1 meters.
Distance to below Level B harassment threshold.	46 meters .....	1,000 meters .....	3 meters .....	14 meters .....	12 meters.
Sea otter density .....	2.31/km <sup>2</sup>				
Level B area (km <sup>2</sup> ) .....	0.00663 .....	1.45153 .....	0.000028 .....	0.000613 .....	0.00045.
Potential sea otters affected by sound per day.	0.015313 .....	3.353045 .....	0.00000647 .....	0.001416 .....	0.00104.
Potential sea otters affected by sound per day (rounded).	1 .....	4 .....	0 .....	0 .....	0.
Requested harassment events per year.	1 .....	4 .....	1 .....	1 .....	1.
Requested total harassment events (5-year duration).	5 .....	20 .....	5 .....	5 .....	5.

TABLE 8—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS CORDOVA

Sound source	Impact driver steel piles	Vibratory extraction/installation steel piles
Sound level .....	177 dB SEL <sub>s-s</sub> (190 dB re 1μPa RMS SPL mean maximum at 10 m).	162 dB re 1μPa RMS SPL mean maximum at 10 m.
Source .....	Yurk et al. 2015 .....	Laughlin 2010; WSDOT 2020.
Timing per pile .....	400 strikes/pile .....	10 minutes/pile.
Maximum piles per day .....	1 .....	5.
Number of days of activity—Year 2 only .....	6 .....	6.
Total number of days of activity .....	6 .....	6.
Distance to below Level A harassment threshold .....	8.4 meters .....	0.3 meters.
Distance to below Level B harassment threshold .....	1,000 meters .....	14 meters.
Sea otter density .....	21.15/km <sup>2</sup>	
Level B area (km <sup>2</sup> ) .....	1.57 .....	0.0006.
Potential sea otters affected by sound per day .....	33.2055 .....	0.01269.
Potential sea otters affected by sound per day (rounded) .....	34 .....	1.
Potential harassment events—Year 2 only .....	204 .....	6.
Potential total harassment events (5-year duration) .....	204 .....	6.

TABLE 9—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG STATION JUNEAU

Sound source	Impact driver timber piles	Vibratory extraction/installation timber piles	Power washing
Sound level .....	160 dB SEL <sub>s-s</sub> (170 dB re 1μPa RMS SPL mean maximum at 10 m).	153 dB re 1μPa RMS SPL mean maximum at 10 m.	161 dB re 1μPa RMS SPL mean maximum at 10 m.
Source .....	Caltrans 2020; WSDOT 2020 .....	Greenbusch Group 2018 .....	Austin 2017; 84 FR 12336, April 1, 2019.
Timing per pile .....	30 minutes/pile; 100 strikes/pile ...	10 minutes/pile .....	30 minutes/pile.

TABLE 9—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG STATION JUNEAU—Continued

Sound source	Impact driver timber piles	Vibratory extraction/installation timber piles	Power washing
Maximum piles per day .....	5 .....	5 .....	5.
Number of days of activity per year	10 .....	10 .....	10.
Total number of days of activity ....	50 .....	50 .....	50.
Distance to below Level A harassment threshold.	0.7 meters .....	0.1 meters .....	0.1 meters.
Distance to below Level B harassment threshold.	46 meters .....	3 meters .....	12 meters.
Sea otter abundance in Level B area.	0.475403 .....	0.179145 .....	0.179145.
Potential sea otters affected by sound per day (rounded).	1 .....	1 .....	1.
Potential harassment events per year.	10 .....	10 .....	10.
Potential total harassment events (5-year duration).	50 .....	50 .....	50.

TABLE 10—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS PETERSBURG

Sound source	Impact driver		Vibratory extraction/installation		Power washing
	Timber piles	Steel piles	Timber piles	Steel piles	
Sound level .....	160 dB SEL <sub>s-s</sub> (170 dB re 1μPa RMS SPL mean maximum at 10 m).	177 dB SEL <sub>s-s</sub> (190 dB re 1μPa RMS SPL mean maximum at 10 m).	153 dB re 1μPa RMS SPL mean maximum at 10 m.	162 dB re 1μPa RMS SPL mean maximum at 10 m.	161 dB re 1μPa RMS SPL mean maximum at 10 m.
Source .....	Caltrans 2020; WSDOT 2020.	Yurk et al. 2015 .....	Greenbusch Group 2018.	Laughlin 2010; WSDOT 2020.	Austin 2017; 84 FR 12336, April 1, 2019.
Timing per pile .....	30 minutes/pile; 100 strikes/pile.	400 strikes/pile .....	10 minutes/pile .....	10 minutes/pile .....	30 minutes/pile.
Maximum piles per day.	5 .....	1 .....	5 .....	5 .....	5.
Number of days of activity per year.	4 .....	4 .....	4 .....	4 .....	4.
Total number of days of activity.	20 .....	20 .....	20 .....	20 .....	20.
Distance to below Level A harassment threshold.	0.7 meters .....	8.4 meters .....	0.1 meters .....	0.3 meters .....	0.1 meters.
Distance to below Level B harassment threshold.	46 meters .....	1,000 meters .....	3 meters .....	14 meters .....	12 meters.
Sea otter abundance in Level B area.	0.347151 .....	5.5504 .....	0.176168 .....	0.176168 .....	0.176168.
Potential sea otters affected by sound per day (rounded).	1 .....	6 .....	1 .....	1 .....	1.
Potential harassment events per year.	4 .....	24 .....	4 .....	4 .....	4.
Potential total harassment events.	20 .....	120 .....	20 .....	20 .....	20.

TABLE 11—SUMMARY BY PROJECT COMPONENT OF SOUND LEVEL, TIMING OF SOUND PRODUCTION, DISTANCE FROM SOUND SOURCE TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS, DAYS OF IMPACT, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE AT USCG MOORINGS SEWARD

Sound source	Impact driver steel piles	Vibratory extraction/installation steel piles
Sound level .....	177 dB SEL <sub>s-s</sub> (190 dB re 1μPa RMS SPL mean maximum at 10 m).	162 dB re 1μPa RMS SPL mean maximum at 10 m.
Source .....	Yurk et al. 2015 .....	Laughlin 2010; WSDOT 2020.
Timing per pile .....	400 strikes/pile .....	10 minutes/pile.
Maximum piles per day .....	1 .....	5.
Number of days of activity per year .....	4 .....	4.
Total number of days of activity .....	4 .....	4.
Distance to below Level A harassment threshold .....	8.4 meters .....	0.3 meters.
Distance to below Level B harassment threshold .....	1,000 meters .....	14 meters.
Sea otter density .....	2.31/km <sup>2</sup>	
Level B area (km <sup>2</sup> ) .....	0.2386 .....	0.0002.
Potential sea otters affected by sound per day .....	0.551166 .....	0.000462.
Potential sea otters affected by sound per day (rounded) .....	1 .....	0.
Requested harassment events—Year 3 only .....	4 .....	1.
Requested total harassment events (5-year duration) .....	4 .....	1.

Sound levels for all sources are unweighted and given in dB re 1 μPa. Nonimpulsive sounds are in the form of mean maximum root mean square (RMS) sound pressure level (SPL) as it is more conservative than cumulative sound exposure level (SEL) or peak SPL for these activities. Impulsive sound sources are in the form of SEL for a single strike.

To determine the number of sea otters that may experience in-water sounds >160 dB re 1μPa, we applied two different methods driven by the available survey data. For sites in Southeast Alaska (Sitka, Ketchikan, Petersburg, and Juneau; figures 2 through 5 in the supplemental figures document available at <https://www.regulations.gov> under Docket No. FWS–R7–ES–2022–0025), we determined the number of sea otters present in each 400-m×400-m pixel of the sea otter density raster digital map layer developed by Eisaguirre et al. (2021) and rounded these values to the nearest whole number. The numbers of sea otters present in the ensonified area for a given activity was derived by summing the values of the pixels that intersected with the polygon of the ensonified area. These values, as well as the number of sea otters expected to be exposed to sounds >160 dB re 1μPa in a given year and across the 5-year ITR period, can be found in tables 5, 6, 9, and 10.

For Kodiak, Seward, Valdez, and Cordova (figures 6 through 9 in the supplemental figures document available at <https://www.regulations.gov> under Docket No. FWS–R7–ES–2022–0025), we multiplied the area ensonified

to >160 dB re 1μPa by densities of animals derived from surveys conducted of the Kodiak Archipelago (Cobb 2018) and Prince William Sound (Weitzman and Esslinger 2015). These densities, as well as the number of sea otters expected to be exposed to sounds >160 dB re 1μPa in a given year and across the 5-year ITR period, can be found in tables 4, 7, 8, and 11.

For all locations, we assumed that the different types of activities would occur sequentially and that the total number of days of work in a year would equal the sum of the number of days required to complete each type of activity planned for that year. While it is possible that on some days more than one type of activity will take place, which would reduce the number of days of exposure within a year, we cannot know this information in advance. As such, the estimated number of days and, therefore, exposures per year is the maximum possible for the planned work. Where the number of exposures expected per day was zero to three or more decimal places (*i.e.*, <0.00X), the number of exposures per day was assumed to be zero. However, USCG has requested, and the Service is granting, authorization of one take per year as a contingency.

No Level A harassment (*i.e.*, injury) is anticipated or authorized. The specified activities are not anticipated to result in Level A harassment because the propagation distances for sounds capable of causing PTS, or other impacts that rise to the level of injury, are small enough that this type of exposure is preventable. While in-water sound levels will be capable of causing PTS

from up to 16.9 m from the source location, operations will be shut down should any marine mammal come within 20 m of project activities. Soft-start and zone clearance prior to startup will also prevent the exposure of marine mammals to sound levels that could cause PTS.

*Critical Assumptions*

We estimate that 25 takes of 5 Southwest Alaska sea otters by Level B harassment, 255 takes of 77 Southcentral Alaska sea otters by Level B harassment, and 700 takes of 115 Southeast Alaska sea otters by Level B harassment will occur due to USCG’s proposed dock construction activities. In order to conduct this analysis and estimate the potential amount of take by Level B harassment, several critical assumptions were made.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. A portion of animals likely respond in ways that indicate some level of disturbance but not to any biologically significant behaviors.

For sites in Southeast Alaska, sea otter density was calculated using a Bayesian hierarchical model created by Eisaguirre et al. (2021), which includes assumptions that can be found in the original publication. For sites in Southwest and Southcentral Alaska, sea otter densities were taken from surveys and analyses conducted by Cobb (2018) and Weitzman and Esslinger (2015). Methods and assumptions for each of these surveys can be found in the original publications.



Sound level estimates for construction activities were generated using sound source verification from recent pile-driving activities in a number of locations within and beyond Alaska. Environmental conditions in these locations, including water depth, substrate, and ambient sound levels are similar to those in the project location, but not identical. Further, estimation of ensonification zones were based on sound attenuation models using a simple spreading loss model. These factors may lead to actual sound values differing slightly from those estimated here.

Finally, the pile-driving activities described here will also create in-air noise. Because sea otters spend over half of their day with their heads above water (Esslinger et al. 2014), they will be exposed to an increase in air noise from

construction equipment. However, we have calculated Level B harassment with the assumption that an individual may be harassed only one time per 24-hour period, and underwater sound levels will be more disturbing and extend farther than in-air noise. Thus, while sea otters may be disturbed by noise both in air and underwater, we have relied on the more conservative underwater estimates.

*Sum of Harassment From All Sources*

USCG will conduct pile driving and marine construction activities over the GOA during a period of 5 years following the effective date of the final rule. A summary of total numbers of estimated takes by Level B harassment during the duration of the project by season and take category is provided in table 12.

In a single year, we estimate five instances of take by Level B harassment of one northern sea otter from the Southwest Alaska stock due to behavioral responses or TTS associated with noise exposure. Over the 5-year duration of these proposed ITRs, we estimate 25 instances of take by Level B harassment of 5 northern sea otters from the Southwest Alaska stock due to behavioral responses or TTS associated with noise exposure. Although multiple instances of harassment of otters are possible, these events are likely to result in only temporary changes in behavior. As such, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected animals and, therefore, would not rise to the level of an injury or Level A harassment.

**TABLE 12—SUMMARY BY PROJECT SITE AND STOCKS OF SEA OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE, SEA OTTERS IN LEVEL B HARASSMENT ENSONIFICATION AREA, FOR SINGLE-YEAR OPERATIONS AND OVER THE 5-YEAR DURATION OF THE ITR**

Location	Number of otters (single year)	Number of exposures (single year)	Number of otters (5 years)	Number of exposures (5 years)
Kodiak .....	1	5	5	25
Total Southwest Alaska stock .....	1	5	5	25
Seward .....	2	5	2	5
Valdez .....	8	8	40	40
Cordova .....	35	210	35	210
Total Southcentral Alaska stock .....	45	223	77	255
Sitka .....	6	30	30	150
Juneau .....	3	30	15	150
Petersburg .....	10	40	50	200
Ketchikan .....	4	40	20	200
Total Southeast Alaska stock .....	23	140	115	700
<i>Total all stocks</i> .....	69	368	197	980

In a single year, we estimate 223 instances of take by Level B harassment of 45 northern sea otters from the Southcentral Alaska stock due to behavioral responses or TTS associated with noise exposure. Over the 5-year duration of these proposed ITRs, we estimate 255 instances of take by Level B harassment of 77 northern sea otters from the Southcentral Alaska stock due to behavioral responses or TTS associated with noise exposure. Although multiple instances of harassment of otters are possible, these events are likely to result in only temporary changes in behavior. As such, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected animals and, therefore, would not rise to

the level of an injury or Level A harassment.

In a single year, we estimate 140 instances of take by Level B harassment of 23 northern sea otters from the Southeast Alaska stock due to behavioral responses or TTS associated with noise exposure. Over the 5-year duration of these proposed ITRs, we estimate 700 instances of take by Level B harassment of 115 northern sea otters from the Southeast Alaska stock due to behavioral responses or TTS associated with noise exposure. Although an estimated 700 instances of harassment of 115 otters are possible, these events are likely to result in only temporary changes in behavior. As such, these events are unlikely to have significant consequences for the health, reproduction, or survival of affected

animals and, therefore, would not rise to the level of an injury or Level A harassment.

**Determinations and Findings**

Sea otters exposed to sound from the specified activities are likely to respond with temporary behavioral modification or displacement. The specified activities could temporarily interrupt the feeding, resting, and movement of sea otters. Because activities will occur during a limited amount of time and in a localized region, the impacts associated with the project are likewise temporary and localized. The anticipated effects are primarily short-term behavioral reactions and displacement of sea otters near active operations.

Sea otters that encounter the specified activity may exert more energy than they would otherwise due to temporary

cessation of feeding, increased vigilance, and retreat from the project area. We expect that affected sea otters will tolerate this exertion without measurable effects on health or reproduction. The anticipated takes will be due to short-term Level B harassment in the form of TTS, startling reactions, or temporary displacement.

With the adoption of the mitigation measures proposed in USCG's request and required by this proposed ITR, anticipated take was reduced. Those mitigation measures are further described below.

#### *Small Numbers*

To assess whether the authorized incidental taking would be limited to "small numbers" of marine mammals, the Service uses a proportional approach that considers whether the estimated number of marine mammals to be subjected to incidental take is small relative to the population size of the species or stock. More specifically, the Service compares the number of animals anticipated to be taken in each year contemplated by the ITR with the population estimate applicable to each of those years. Here, predicted levels of take were determined based on estimated density of sea otters in the project area and ensonification zones developed using empirical evidence from similar geographic areas. We estimate that the USCG projects may annually result in the incidental take of approximately:

- 1 sea otter from the Southwest Alaska stock, representing 0.000 percent of the best available estimate of that stock (USFWS 2020) ( $1 \div 51,382 \approx 0.00000$ );
- 45 sea otters from the Southcentral Alaska stock, representing 0.208 percent of the best available estimate that stock (Esslinger et al. 2021) ( $45 \div 21,617 = 0.00208$ ); and
- 23 sea otters from the Southeast Alaska stock, representing 0.087 percent of the best available estimate of that stock (Eisaguirre et al. 2021) ( $23 \div 26,347 = 0.000873$ ).

Based on these numbers, we propose a finding that USCG's specified activities projects will take only a small number of animals from each affected stock of northern sea otters.

We note ongoing litigation concerning a separate, recently issued ITR in which plaintiffs assert that the Service's "small numbers" analysis must aggregate the number of animals anticipated to be taken in each year contemplated by the ITR and compare that multiyear number to the population estimate applicable to 1 year. While we disagree with this approach, for the sake of providing the

applicant with regulatory certainty pending resolution of that litigation, we further analyze the "small numbers" question using this alternative approach and estimate the incidental take of:

- 5 sea otters from the Southwest Alaska stock, representing 0.011 percent of the best available estimate of that stock (USFWS 2020) ( $5 \div 51,382 = 0.00010$ );
- 77 sea otters from the Southcentral Alaska stock, representing 0.356 percent of the best available estimate that stock (Esslinger et al. 2021) ( $77 \div 21,617 = 0.00356$ ); and
- 115 sea otters from the Southeast Alaska stock, representing 0.437 percent of the best available estimate of that stock (Eisaguirre et al. 2021) ( $115 \div 26,347 = 0.004363$ ).

These alternative numbers also support our proposed finding that USCG's specified activities will take only a small number of animals from each affected stock of northern sea otters.

#### *Negligible Impact*

We propose a finding that any incidental take by harassment resulting from the specified activities cannot be reasonably expected to, and is not reasonably likely to, adversely affect the sea otter through effects on annual rates of recruitment or survival and will, therefore, have no more than a negligible impact on the Southwest, Southcentral, and Southeast Alaska stocks of northern sea otters. In making this finding, we considered the best available scientific information, including the biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of marine mammals to this disturbance. In addition, we reviewed USCG-provided materials, information in our files and datasets, published reference materials, and species experts.

Sea otters are likely to respond to proposed activities with temporary behavioral modification or temporary displacement. These reactions are not anticipated to have consequences for the long-term health, reproduction, or survival of affected animals. Most animals will respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected animals are expected to resume normal behaviors

soon after exposure with no lasting consequences. Each sea otter is estimated to be exposed to construction noise for between 1 and 10 days per year, resulting in repeated exposures. However, injuries (*i.e.*, Level A harassment or PTS) due to chronic sound exposure is estimated to occur at a longer time scale (Southall et al. 2019). The area that will experience noise greater than Level B thresholds due to rock-socket drilling and vibratory hammering is very small, and an animal that may be disturbed could easily escape the noise by moving to nearby quiet areas. Further, sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002), thus their ears will not be exposed to continuous noise, and the amount of time it may take for permanent injury is considerably longer than that of mammals primarily under water. Some animals may exhibit some of the stronger responses typical of Level B harassment, such as fleeing, interruption of feeding, or flushing from a haulout. These responses could have temporary biological impacts for affected individuals but are not anticipated to result in measurable changes in survival or reproduction.

The total number of animals affected and severity of impact is not sufficient to change the current population dynamics at the stock scale. Although the specified activities may result in approximately 25 incidental takes of 5 sea otters from the Southwest Alaska stock, 255 incidental takes of 77 sea otters from the Southcentral Alaska stock, and 700 incidental takes of 115 otters from the Southeast Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the proposed activities as mitigated by the avoidance and minimization measures identified in USCG's mitigation and monitoring plan and applied in the rule portion of this document in proposed § 18.149 Mitigation, below. These mitigation measures are designed to minimize interactions with and impacts to sea otters. These measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed ITRs. For these reasons, we propose a finding that the 2022–2027 USCG project will have a negligible impact on the Southeast, Southcentral,

and Southwest Alaska stocks of northern sea otters.

#### *Least Practicable Adverse Impacts*

We find that the mitigation measures required by this proposed ITR will effect the least practicable adverse impacts on the stocks from any incidental take likely to occur in association with the specified activities. In making this finding, we considered the biological characteristics of sea otters, the nature of the specified activities, the potential effects of the activities on sea otters, the documented impacts of similar activities on sea otters, and alternative mitigation measures.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures are expected to achieve this goal. We considered the nature of the potential adverse impact being mitigated (likelihood, scope, range), the likelihood that the measures will be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (e.g., cost, impact on operations). We assessed whether any additional, practicable requirements could be implemented to further reduce effects but did not identify any.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, USCG has proposed mitigation measures, including the following:

- Using the smallest diameter piles practicable while minimizing the overall number of piles;
- Conducting activities that may produce in-water sound as close to low tide as possible;
- Development of a marine mammal monitoring and mitigation plan;
- Establishment of shutdown and monitoring zones;
- Visual mitigation monitoring by designated Protected Species Observers (PSOs);
- Site clearance before startup;
- Soft-start procedures; and
- Shutdown procedures.

#### *Impact on Subsistence Use*

The proposed project will not preclude access to harvest areas or interfere with the availability of sea otters for harvest. Additionally, the USCG facilities are located in developed areas and largely within areas where firearm use is prohibited. We therefore propose a finding that USCG's

anticipated harassment will not have an unmitigable adverse impact on the availability of any stock of northern sea otters for taking for subsistence uses. In making this finding, we considered the timing and location of the proposed activities and the timing and location of subsistence harvest activities in the area of the proposed project.

#### **Monitoring and Reporting**

The purposes of the monitoring requirements are to document and provide data for assessing the effects of specified activities on sea otters; to ensure that take is consistent with that anticipated in the small numbers, negligible impact, and subsistence use analyses; and to detect any unanticipated effects on the species. Monitoring plans include steps to document when and how sea otters are encountered and their numbers and behaviors during these encounters. This information allows the Service to measure encounter rates and trends and to estimate numbers of animals potentially affected. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to the project activity.

As proposed, monitoring activities will be summarized and reported in a formal report each year. USCG must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We will base each year's monitoring objective on the previous year's monitoring results. We will require an approved plan for monitoring and reporting the effects of pile driving and marine construction activities on sea otters prior to issuance of an LOA. We will require approval of the monitoring results for continued operation under the LOA.

We find that these proposed monitoring and reporting requirements to evaluate the potential impacts of planned activities will ensure that the effects of the activities remain consistent with the rest of the findings.

#### **Request for Public Comments**

If you wish to comment on these proposed regulations or the associated draft environmental assessment, you may submit your comments by any of the methods described in **ADDRESSES**. Please identify if you are commenting on the proposed regulations, the draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed regulations, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific

section or paragraph that you are addressing. The Service will consider all comments that are received by the close of the comment period (see **DATES**).

#### *Clarity of This Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use common, everyday words and clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

#### **Required Determinations**

##### *National Environmental Policy Act (NEPA)*

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that authorizing the nonlethal, incidental, unintentional take by Level B harassment of up to 5 incidental takes of 5 sea otters from the Southwest Alaska stock, 255 incidental takes of 77 sea otters from the Southcentral Alaska stock, and 700 incidental takes of 115 otters from the Southeast Alaska stock of sea otters in the specified geographic region during the regulatory period would not significantly affect the quality of the human environment, and thus, preparation of an environmental impact statement for these proposed incidental take regulations, if finalized, is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

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

Under the ESA (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in

destruction or adverse modification of critical habitat. While neither the Southeast Alaska nor Southcentral Alaska stock is listed under the ESA, the Southwest Alaska stock is listed as threatened under the ESA. Prior to finalizing these proposed ITRs, if warranted, the Service will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of these ITRs. These evaluations and findings will be made available on the Service's website at <https://ecos.fws.gov/ecp/report/biological-opinion>.

#### *Government-to-Government Consultation*

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives. Our efforts are guided by the following policies and directives:

- (1) The Native American Policy of the Service (January 20, 2016);
- (2) the Alaska Native Relations Policy (currently in draft form);
- (3) Executive Order 13175 (January 9, 2000);
- (4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), and 3342 (October 21, 2016);
- (5) the Alaska Government-to-Government Policy (a departmental memorandum issued January 18, 2001); and
- (6) the Department of the Interior's policies on consultation with Alaska Native Tribes and organizations.

We have evaluated possible effects of the proposed activities on federally recognized Alaska Native Tribes and organizations. The Service has determined that, due to this project's locations and activities, the Tribal organizations and communities across the Gulf of Alaska, as well as relevant Alaska Native Claims Settlement Act corporations, will not be impacted by this project. Regardless, we will be reaching out to them to inform them of the availability of these proposed regulations and offer them the opportunity to consult.

We invite continued discussion, either about the project and its impacts or about our coordination and

information exchange throughout the ITR process.

#### *Regulatory Planning and Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules for a determination of significance. OMB has designated this proposed rule as not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

OIRA bases its determination of significance upon the following four criteria: (a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) whether the rule will create inconsistencies with other Federal agencies' actions; (c) whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; and (d) whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: the development of requests for LOAs; monitoring, recordkeeping, and reporting activities conducted during pile driving and marine construction operations; development of activity- and species-specific marine mammal monitoring and mitigation plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Realistically, costs of compliance with this proposed rule, if finalized, are minimal in comparison to those related to actual pile driving and marine construction operations. The actual costs to develop the petition for promulgation of regulations and LOA requests do not exceed \$200,000 per

year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis.

#### *Small Business Regulatory Enforcement Fairness Act*

We have determined that this proposed rule, if finalized, is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### *Regulatory Flexibility Act*

We have determined that this proposed rule, if finalized, will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). USCG, and their contractors conducting pile driving and marine construction activities in the GOA, are the only entities subject to these proposed ITRs. Therefore, neither a regulatory flexibility analysis nor a small entity compliance guide is required.

#### *Takings Implications*

This proposed rule, if finalized, does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of sea otters by marine construction and pile driving and, thereby, exempts the USCG from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

#### *Federalism Effects*

This proposed rule, if finalized, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect sea otters.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule, if finalized, will not "significantly or uniquely" affect small governments. A small government agency plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this

rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. This proposed rule, if finalized, will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### *Civil Justice Reform*

The Departmental Solicitor’s Office has determined that this proposed rule, if finalized, will not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Paperwork Reduction Act*

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with the incidental take of marine mammals during specified activities for this new subpart, as well as previously approved requirements in subparts J and K, and assigned OMB Control Number 1018–0070 (expires 01/31/2024).

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018–0070. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

While this proposed rule pertains only to the incidental taking of northern sea otters, this information collection includes requirements associated with the incidental taking of polar bears, Pacific walruses, and northern sea otters in Alaska. The Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), imposed, with certain exceptions, a moratorium on the taking of marine mammals. Section 101(a)(5)(A) of the MMPA directs the Secretary of the Interior to allow, upon request by citizens of the United States, the taking of small numbers of marine mammals incidental to specified activities (other than commercial fishing) if the Secretary makes certain findings and prescribes specific regulations that, among other things, establish permissible methods of taking.

This is a nonform collection. Respondents must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. Specific regulations governing authorized incidental take of marine mammal activities are contained in 50 CFR part 18, subparts J (incidental take of polar bears and Pacific walruses in the Beaufort Sea) and K (incidental take of northern sea otters in the Cook Inlet). These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs. We use the information to verify the findings required to issue incidental take

regulations, to decide if we should issue an LOA, and (if an LOA is issued) what conditions should be included in the LOA. In addition, we analyze the information to determine impacts to polar bears, Pacific walruses, northern sea otters, and the availability of those marine mammals for subsistence purposes of Alaska Natives.

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *Addition of New Subpart*—With this proposed rulemaking (RIN 1018–BG05), we propose to add a new subpart, 50 CFR part 18, subpart L (U.S. Coast Guard) for a period of 5 years effective from the date of final issuance of these ITRs. This new subpart will not require new information collections beyond those contained in this submission, which were previously approved by OMB. The addition of subpart L does, however, require an adjustment to the previously approved burden for the application, reporting, and recordkeeping burden requirements.

(2) We are also proposing a revision to the previously approved “Onsite Monitoring and Observation Reports” information collection to split it into three separate information collections to more accurately account for burden for the various components under this specific section of the regulations:

a. *In-Season Monitoring (Activity Progress Reports)* (50 CFR 18.127(a)(1))—Activity progress reports. Holders of an LOA must:

- Notify the Service at least 48 hours prior to the onset of activities;
- Provide the Service weekly progress reports of any significant changes in activities and/or locations; and
- Notify the Service within 48 hours after ending of activities.

b. *In-Season Monitoring (Polar Bear Observation Reports)* (50 CFR 18.127(a)(3))—Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

- Date, time, and location of observation;
- Number of bears;
- Sex and age of bears (if known);
- Observer name and contact information;
- Weather, visibility, sea state, and sea-ice conditions at the time of observation;

- Estimated closest distance of bears from personnel and facilities;
- Industry activity at time of sighting;
- Possible attractants present;
- Bear behavior;
- Description of the encounter;
- Duration of the encounter; and
- Mitigation actions taken.

c. *Notification of LOA Incident Report* (50 CFR 18.127(b))—Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a marine mammal occurs. Reports must include:

- All information specified for an observation report;
- A complete detailed description of the incident; and
- Any other actions taken.

In addition to the revisions described above, we are bringing the following existing regulatory requirements contained in part 18 that were not previously approved by OMB under the PRA into compliance:

(1) *Mitigation—Interaction Plan* (50 CFR 18.126(a)(1)(iii))—All holders of an LOA must have an approved polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite and provide polar bear awareness training to certain personnel. Interaction plans must include:

- The type of activity and where and when the activity will occur (*i.e.*, a summary of the plan of operation);
- A food, waste, and other "bear attractants" management plan;
- Personnel training policies, procedures, and materials;
- Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;
- Polar bear avoidance and encounter procedures; and
- Polar bear observation and reporting procedures.

(2) *Mitigation 3rd-Party Notifications* (50 CFR 18.126(a)(2) and 18.126(e)(1))—All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the Service documentation of communications as described in § 18.122.

(3) *Mitigation—Requests for Exemption Waivers* (50 CFR 18.126(c)(4))—Exemption waivers to the operating conditions in 50 CFR 18.126(c) may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and

available information on walrus and polar bear distributions in the area of interest.

(4) *Mitigation—Plan of Cooperation* (50 CFR 18.126(e)(2))—When appropriate, a holder of an LOA will be required to develop and implement a Service-approved plan of cooperation (POC). The POC must include a description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters and a description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use. The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

We also propose to renew the existing reporting and/or recordkeeping requirements identified below:

(1) *Application for Regulations*—Regulations at 50 CFR part 18 require the applicant to provide information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity. Applicants can find specific requirements in 50 CFR part 18, subparts J and K. These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine whether to issue specific regulations and, subsequently, LOAs. The required information includes:

- A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals.
- The dates and duration of such activity and the specific geographical region where it will occur.
- Based on the best available scientific information, each applicant must also provide:

—An estimate of the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions;

—The type of taking (*e.g.*, disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

—A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

—The anticipated impact of the activity upon the species or stocks; and

—The anticipated impact of the activity on the availability of the species or stocks for subsistence uses.

- The anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat.

- The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.)

- Suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species through an analysis of the level of taking or impacts and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity.

- Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating its effects.

- Applicants must develop and implement a site-specific (or umbrella plan addressing site-specific considerations), Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on marine mammals and the subsistence use of these species.

- Applicants must also provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

This information is necessary so that we can anticipate the impact of the activity on the species or stocks and on the availability of the species or stocks for subsistence uses. Under requirements of the MMPA, we cannot authorize a take unless the total of all takes will have a negligible impact on the species or stocks and, where appropriate, will not have an

unmitigable adverse impact on the availability of the species or stocks for subsistence uses. These requirements ensure that applicants are aware of related monitoring and research efforts they can apply to their situation, and that the monitoring and reporting that we impose are the least burdensome to the applicant.

(2) *Final Monitoring Report*—The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

- Copies of all observation reports submitted under the LOA;
- A summary of the observation reports;
- A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;
- Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;
- Analysis of the effectiveness of mitigation measures;
- Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and
- Estimates of take in relation to the specified activities.

(3) *Requests for Letters of Authorization (LOA)*—LOAs, which may be issued only to U.S. citizens, are required to conduct activities pursuant to any specific regulations established. Once specific regulations are effective, the Service will, to the maximum extent possible, process subsequent requests for LOAs within 30 days after receipt of the request by the Service. All LOAs will specify the period of validity and any additional terms and conditions appropriate for the specific request. Issuance of LOAs will be based on a determination that the level of taking will be consistent with the findings

made for the total taking allowable under the specific regulations.

(4) *Onsite Monitoring and Observation Reports* (See proposed revision section above.)—The regulations also require that each holder of an LOA submit a monitoring report indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specific activity. Since the inception of incidental take authorizations for polar bears (*Ursus maritimus*), Pacific walruses (walruses) (*Odobenus rosmarus divergens*), and northern sea otters (otters) (*Enhydra lutris kenyoni*), we have required monitoring and reporting during oil and gas industry activities. The purpose of monitoring and reporting requirements is to assess the effects of industrial activities on polar bears, walruses, and otters to ensure that take is minimal to marine mammal populations, and to detect any unanticipated effects of take. The monitoring focus has been site-specific, area-specific, or population-specific. Site-specific monitoring measures animal-human encounter rates, outcomes of encounters, and trends of animal activity in the industrial areas, such as polar bear numbers, behavior, and seasonal use. Area-specific monitoring includes analyzing animal spatial and temporal use trends, sex/age composition, and risk assessment to unpredictable events, such as oil spills. Population-specific monitoring includes investigating species' life-history parameters, such as population size, recruitment, survival, physical condition, status, and mortality.

(5) *Polar Bear Den Detection Report*—Holders of an LOA seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season must make efforts to locate occupied polar bear dens within and near proposed areas of operation. They may use any appropriate tool, such as forward-looking infrared imagery and/or polar bear scent-trained dogs, in concert with

denning habitat maps along the Alaskan coast. In accordance with 50 CFR 18.128(b)(1) and (b)(2), LOA holders must report all observed or suspected polar bear dens to us prior to the initiation of activities. We use this information to determine the appropriate terms and conditions in an individual LOA in order to minimize potential impacts and disturbance to polar bears.

Holders of an LOA seeking to carry out onshore activities during the denning season (November–April) must conduct two separate surveys for occupied polar bear dens in all denning habitat within 1.6 km (1 mi) of proposed activities using aerial infrared (AIR) imagery. Further, all denning habitat within 1.6 km (1 mi) of areas of proposed seismic surveys must be surveyed three separate times with AIR technology.

Flight crews will record and report environmental parameters including air temperature, dew point, wind speed and direction, cloud ceiling, and percent humidity, and a flight log will be provided to the Service within 48 hours of the flight.

*Title of Collection:* Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR part 18, subparts J, K, and L.

*OMB Control Number:* 1018–0070.

*Form Numbers:* None.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Public:* Individuals/households, private sector (oil and gas industry companies), State/local/Tribal governments, and Federal Government.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion for applications; annually or on occasion for reports.

*Total Estimated Annual Nonhour Burden Cost:* \$200,000 (associated with the polar bear den detection survey and report).

Type of action	Number of annual respondents	Number of responses each	Total annual responses	Average completion time (hours)	Total annual burden hours
<i>Incidental Take of Marine Mammals—Application for Regulations:</i>					
Reporting—Private Sector .....	3	1	3	20	450
Recordkeeping—Private Sector .....				130	
Reporting—Federal Government .....	2	1	2	20	300
Recordkeeping—Federal Government .....				130	
<i>Requests—Letters of Authorization:</i>					
Reporting—Private Sector .....	15	4	60	8	1,440
Recordkeeping—Private Sector .....				16	
Reporting—Federal Government .....	5	4	20	8	480
Recordkeeping—Federal Government .....				16	

Type of action	Number of annual respondents	Number of responses each	Total annual responses	Average completion time (hours)	Total annual burden hours
<i>Final Monitoring Report</i>					
Reporting—Private Sector .....	15	4	60	8	1,440
Recordkeeping—Private Sector .....				42	
Reporting—Federal Government .....	5	4	20	8	480
Recordkeeping—Federal Government .....				42	
<i>Polar Bear Den Detection Report (50 CFR 18.126(b)(1)(iv)):</i>					
Reporting—Private Sector .....	4	1	4	8	200
Recordkeeping—Private Sector .....				42	
<i>In-season Monitoring—Activity Progress Reports (50 CFR 18.127(a)(1)) NEW (Revised):</i>					
Reporting—Private Sector .....	1	1	1	.5	1
Recordkeeping—Private Sector .....				.5	
Reporting—Federal Government .....	1	1	1	.5	1
Recordkeeping—Federal Government .....				.5	
<i>In-season Monitoring—Polar Bear Observation Reports (50 CFR 18.127(a)(3)) NEW (Revised):</i>					
Reporting—Private Sector .....	15	4.5	68	.25	85
Recordkeeping—Private Sector .....				1	
Reporting—Federal Government .....	1	7	7	.25	9
Recordkeeping—Federal Government .....				1	
<i>Notification of LOA Incident Report (50 CFR 18.127(b)) NEW (Revised):</i>					
Reporting—Private Sector .....	2	1	2	.25	2
Recordkeeping—Private Sector .....				.5	
Reporting—Federal Government .....	1	1	1	.25	1
Recordkeeping—Federal Government .....				.5	
<i>Mitigation—Interaction Plan (50 CFR 18.126(a)(1)(iii)) NEW (Existing):</i>					
Reporting—Private Sector .....	12	1	12	2	96
Recordkeeping—Private Sector .....				6	
Reporting—Federal Government .....	3	1	3	2	24
Recordkeeping—Federal Government .....				6	
<i>Mitigation—3rd Party Notifications (50 CFR 18.126(a)(2) and 18.126(e)(1)) NEW (Existing)</i>					
Reporting—Private Sector .....	12	3	36	1	72
Recordkeeping—Private Sector .....				1	
Reporting—Federal Government .....	3	3	9	1	18
Recordkeeping—Federal Government .....				1	
<i>Mitigation—Requests for Exemption Waivers (50 CFR 18.126(c)(4)) NEW (Existing)</i>					
Reporting—Private Sector .....	1	1	1	1	2
Recordkeeping—Private Sector .....				1	
Reporting—Federal Government .....	1	1	1	1	2
Recordkeeping—Federal Government .....				1	
<i>Mitigation—Plan of Cooperation (50 CFR 18.126(e)(2)) NEW (Existing)</i>					
Reporting—Private Sector .....	1	1	1	10	40
Recordkeeping—Private Sector .....				30	
Reporting—Federal Government .....	1	1	1	10	40
Recordkeeping—Federal Government .....				30	
Totals .....	104	.....	313	.....	5,183

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to OMB, with a copy to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov). Please reference OMB Control Number 1018-0070 in the subject line of your comments.

**References**

For a list of the references cited in this proposed rule, see Docket No. FWS-R7-ES-2022-0025, available at <https://www.regulations.gov>.

**Signing Authority**

On July 19, 2022, Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action for publication. On August 9, 2022, Shannon Estenoz authorized the undersigned to sign this document

electronically and submit it to the Office of the Federal Register for publication as an official document of the Department of the Interior.

**List of Subjects in 50 CFR Part 18**

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Marine construction, Reporting and recordkeeping requirements, Transportation.



**Proposed Regulation Promulgation**

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

**PART 18—MARINE MAMMALS**

- 1. The authority citation of 50 CFR part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

- 2. Amend part 18 by adding subpart L to read as follows:

**Subpart L—Nonlethal Taking of Marine Mammals Incidental to Pile Driving and Marine Construction Activities in the Gulf of Alaska**

Sec.

- 18.142 Specified activities covered by this subpart.
- 18.143 Specified geographic region where this subpart applies.
- 18.144 Dates this subpart is in effect.
- 18.145 Procedure to obtain a letter of authorization (LOA).
- 18.146 How the Service will evaluate a request for an LOA.
- 18.147 Authorized take allowed under an LOA.
- 18.148 Prohibited take under an LOA.
- 18.149 Mitigation.
- 18.150 Monitoring.
- 18.151 Reporting requirements.

**§ 18.142 Specified activities covered by this subpart.**

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take, as defined in § 18.3 and under section 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), of small numbers of northern sea otters (*Enhydra lutris kenyoni*; hereafter “sea otters”) by the U.S. Coast Guard (hereafter “USCG” or “the applicant”) while engaged in activities associated with or in support of marine construction activities in the Gulf of Alaska. The applicant is a U.S. citizen as defined in § 18.27(c).

**§ 18.143 Specified geographic region where this subpart applies.**

(a) The specified geographic region encompasses areas within 2 kilometers (km) (~1.25 miles (mi)) of eight USCG facilities within the USCG Civil Engineering Unit, Juneau Area of Responsibility. These facilities are: Base Kodiak, Moorings Seward, Moorings Valdez, Moorings Cordova, Moorings Sitka, Station Juneau, Moorings Petersburg, and Base Ketchikan.

(b) The geographic area of these incidental take regulations (ITRs) includes all Alaska State waters within this area as well as all adjacent rivers, estuaries, and coastal lands where sea otters may occur.

**§ 18.144 Dates this subpart is in effect.**

Regulations in this subpart are effective until [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

**§ 18.145 Procedure to obtain a letter of authorization (LOA).**

(a) To incidentally take sea otters pursuant to the regulations in this subpart, USCG must apply for and obtain an LOA in accordance with the regulations in § 18.27(f) and this section. USCG must submit the request for an LOA to the U.S. Fish and Wildlife Service (Service) Alaska Region Marine Mammals Management Office (MMM), MS 341, 1011 East Tudor Road, Anchorage, Alaska 99503, at least 30 days prior to the start of the proposed activity.

(b) The request for an LOA must include the following information:

- (1) An operational plan for the activity;
- (2) A digital geospatial file of the project footprint; and
- (3) A site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the activities on sea otters.

**§ 18.146 How the Service will evaluate a request for an LOA.**

(a) The Service will evaluate each request for an LOA to determine if the proposed activity is consistent with the analysis and findings made for the regulations in this subpart. Depending on the results of the evaluation, we may grant the requested authorization, add further conditions, or deny the request for an LOA.

(b) Once issued, the LOA may be withdrawn or suspended if the project activity is modified in a way that undermines the results of the previous evaluation, if the conditions of the regulations in this subpart are not being substantially met, or if the taking allowed is or may be having more than a negligible impact on the affected stocks of sea otters or an unmitigable adverse impact on the availability of sea otters for subsistence uses.

(c) The Service will make decisions concerning withdrawals of an LOA, either on an individual or class basis, only after notice and opportunity for public comment in accordance with § 18.27(f)(5). The requirement for notice and public comment will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of sea otters.

**§ 18.147 Authorized take allowed under an LOA.**

(a) An LOA allows for the nonlethal, incidental, but not intentional take by Level B harassment of sea otters during activities specified in § 18.142 within the Gulf of Alaska ITR region described in § 18.143.

(b) Each LOA will set forth:

- (1) Permissible methods of incidental take;

- (2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and the availability of the species for subsistence uses; and

- (3) Requirements for monitoring and reporting.

(c) Issuance of the LOA(s) must be based on a determination that the level of take will be consistent with the findings made for the total allowable take under the regulations in this subpart.

**§ 18.148 Prohibited take under an LOA.**

(a) Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as: intentional take, lethal incidental take of sea otters, and any other take that fails to comply with this subpart or with the terms and conditions of an LOA.

(b) If project activities cause unauthorized take, the applicant must take the following actions:

- (1) Cease activities immediately (or reduce activities to the minimum level necessary to maintain safety) and report the details of the incident within 48 hours to the Service MMM at 1–800–362–5148 (business hours); and

- (2) Suspend further activities until the Service has reviewed the circumstances, determined whether additional mitigation measures are necessary to avoid further unauthorized taking, and notified the applicant that project activities may resume.

**§ 18.149 Mitigation.**

(a) *Mitigation measures for all LOAs.* The applicant, including all personnel operating under the applicant’s authority (or “operators,” including contractors, subcontractors, and representatives) must undertake the following activities to avoid and minimize take of sea otters by harassment.

- (1) Implement policies and procedures to avoid interactions with and minimize to the greatest extent practicable adverse impacts on sea otters, their habitat, and the availability of these marine mammals for subsistence uses.

- (2) Develop avoidance and minimization policies and procedures,

in cooperation with the Service, that include temporal or spatial activity restrictions to be used in response to the presence of sea otters engaged in a biologically significant activity (e.g., resting, feeding, hauling out, mating, or nursing).

(3) Cooperate with the Service's MMM Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of pile driving and marine construction activities on sea otters.

(4) Allow Service personnel or the Service's designated representative to board project vessels or visit project worksites for the purpose of monitoring impacts to sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so.

(5) Designate trained and qualified protected species observers (PSOs) to monitor for the presence of sea otters, initiate mitigation measures, and monitor, record, and report the effects of the activities on sea otters. The applicant is responsible for providing training to PSOs to carry out mitigation and monitoring.

(6) Have an approved mitigation and monitoring plan on file with the Service MMM and onsite that includes the following information:

(i) The type of activity and where and when the activity will occur (i.e., a summary of the plan of operation);

(ii) Personnel training policies, procedures, and materials;

(iii) Site-specific sea otter interaction risk evaluation and mitigation measures;

(iv) Sea otter avoidance and encounter procedures; and

(v) Sea otter observation and reporting procedures.

(b) *Mitigation measures for in-water noise-generating work.* The applicant must carry out the following measures:

(1) Construction activities must be conducted using equipment that generates the lowest practicable levels of underwater sound within the range of frequencies audible to sea otters.

(2) During all pile-installation activities, regardless of predicted sound levels, a physical interaction shutdown zone of 20 m (66 ft) must be enforced. If a sea otter enters the shutdown zone, in-water activities must be delayed until either the animal has been visually observed outside the shutdown zone or 15 minutes have elapsed since the last observation time without redetection of the animal.

(3) If the impact driver has been idled for more than 30 minutes, an initial set of three strikes from the impact driver must be delivered at reduced energy,

followed by a 1-minute waiting period, before full-powered proofing strikes.

(4) In-water activity must be conducted in daylight. If environmental conditions prevent visual detection of sea otters within the shutdown zone, in-water activities must be stopped until visibility is regained.

(5) All in-water work along the shoreline must be conducted during low tide when the site is dewatered to the maximum extent practicable.

(c) *Mitigation measures for vessel operations.* Vessel operators must take every precaution to avoid harassment of sea otters when a vessel is operating near these animals. The applicant must carry out the following measures:

(1) Vessels must remain at least 500 m from rafts of sea otters unless safety is a factor. Vessels must reduce speed and maintain a distance of 100 m (328 ft) from all sea otters unless safety is a factor.

(2) Vessels must not be operated in such a way as to separate members of a group of sea otters from other members of the group and must avoid alongshore travel in shallow water (<20 m) whenever practicable.

(3) When weather conditions require, such as when visibility drops, vessels must adjust speed accordingly to avoid the likelihood of injury to sea otters.

(4) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include measures identified in paragraphs (c)(1) through (4) of this section.

#### **§ 18.150 Monitoring.**

(a) Operators must work with PSOs to apply mitigation measures and must recognize the authority of PSOs, up to and including stopping work, except where doing so poses a significant safety risk to personnel.

(b) Duties of PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

(c) A sufficient number of PSOs will be available to meet the following criteria: 100 percent monitoring of exclusion zones during all daytime periods of underwater noise-generating work; a maximum of 4 consecutive hours on watch per PSO; a maximum of approximately 12 hours on watch per day per PSO.

(d) All PSOs will complete a training course designed to familiarize individuals with monitoring and data collection procedures. A field crew

leader with prior experience as a sea otter observer will supervise the PSO team. Initially, new or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available for the Service to review.

(e) Observers will be provided with reticule binoculars (10x42), big-eye binoculars or spotting scopes (30x), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

(f) Observers will collect data using the following procedures:

(1) All data will be recorded onto a field form or database.

(2) Global positioning system data, sea state, wind force, and weather will be collected at the beginning and end of a monitoring period, every hour in between, at the change of an observer, and upon sightings of sea otters.

(3) Observation records of sea otters will include date; time; the observer's locations, heading, and speed (if moving); weather; visibility; number of animals; group size and composition (adults/juveniles); and the location of the animals (or distance and direction from the observer).

(4) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and underwater sound levels being generated, the position of sea otters relative to applicable monitoring and mitigation zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation.

(5) For all sea otters in or near a mitigation zone, observers will record the distance from the vessel to the sea otter upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures.

(6) Observers will note any instances of animals lingering close to or traveling with vessels for prolonged periods of time.

#### **§ 18.151 Reporting requirements.**

(a) Operators must notify the Service at least 48 hours prior to commencement of activities.

(b) Monthly reports will be submitted to the Service MMM for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information: dates, times, weather, and sea conditions (including the Beaufort Scale's sea state and wind force conditions) when sea otters were

sighted; the number, location, distance from the sound source, and behavior of the sea otters; the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(c) A final report will be submitted to the Service within 90 days after the expiration of each LOA. It will include the following:

(1) A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the Service, the daily monitoring logs).

(2) A description of all project activities, along with any additional work yet to be done. Factors influencing visibility and detectability of marine mammals (*e.g.*, sea state, number of observers, and fog and glare) will be discussed.

(3) A description of the factors affecting the presence and distribution of sea otters (*e.g.*, weather, sea state, and project activities). An estimate will be included of the number of sea otters exposed to noise at received levels greater than or equal to 160 dB (based on visual observation).

(4) A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.

(5) A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts to sea otters. Sea otter observation records will be provided to the Service in the form of electronic database or spreadsheet files.

(d) All reports must be submitted by email to [fw7\\_mmm\\_reports@fws.gov](mailto:fw7_mmm_reports@fws.gov).

(e) Injured, dead, or distressed sea otters that are not associated with

project activities (*e.g.*, animals known to be from outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the Service within 24 hours of the discovery to either the Service MMM (1-800-362-5148, business hours); or the Alaska SeaLife Center in Seward (1-888-774-7325, 24 hours a day); or both. Photographs, video, location information, or any other available documentation must be provided to the Service.

(f) Operators must notify the Service upon project completion or end of the work season.

**Maureen D. Foster,**

*Chief of Staff, Office of the Assistant Secretary for Fish and Wildlife and Parks.*

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