

Committees will be in a closed session from 8:30 a.m. until 9:15 a.m.

**ADDRESSES:**

*Council address:* The meeting will be held at the San Antonio Marriott Riverwalk Hotel, located at 889 East Market Street, San Antonio, TX; (877) 622-3056. Please visit the Gulf Council website ([www.gulfcouncil.org](http://www.gulfcouncil.org)) for agenda and meeting materials information.

*Council address:* Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; [ava.lasseter@gulfcouncil.org](mailto:ava.lasseter@gulfcouncil.org), telephone: (813) 348-1630, and Mr. Steve VanderKooy, Inter-jurisdictional Fisheries (IJF) Coordinator, Gulf States Marine Fisheries Commission; [svanderkooy@gsmfc.org](mailto:svanderkooy@gsmfc.org), telephone: (228) 875-5912.

**SUPPLEMENTARY INFORMATION:** The following items of discussion are on the agenda, though agenda items may be addressed out of order and any changes will be noted on the Council's website when possible.

Joint Gulf Council's Law Enforcement Technical Committee (LETC) and Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC) Meeting Agenda, Tuesday, October 18, 2022; 8:30 a.m.–5 p.m., CDT.

The joint meeting will begin in a **CLOSED SESSION** from 8:30 a.m. to 9:15 a.m. with introductions and review of revisions to Council SOPP's regarding fishing violations.

General session will begin at approximately 9:30 a.m. with introductions and adoption of agenda, and approval of minutes from the Joint LEC/LETC virtual meeting from March 2022.

The Gulf Council LETC will review and discuss potential management changes to Vermillion Snapper and Gray Triggerfish; changes to Mexico Status Due to IUU Enforcement; IFQ Landings Transaction Discrepancies; and State Licensed Charters Fishing in Federal Waters. The Committees will review the Council's Framework Actions to Change For-Hire Requirements, including Modification to Location Reporting Requirements and Modification of Trip Declaration Requirements.

Following, the committees will receive a SEFHIER program update, a presentation on Return 'Em Right, and will discuss the Nomination Process for the 2022 Officer/Team of the Year Award.

The GSMFC LEC will follow-up on the Future of the Strategic and

Operations Plans, hold a discussion on FADs in State Waters, and review the IJF Program Activity for the status of the Red Drum Profile, Mangrove Snapper Profile Preparations, and Commission Pubs.

The committee will present the State Report Highlights from Florida, Alabama, Mississippi, Louisiana, Texas, USCG, NOAA OLE, and USFWS; and will discuss any Other Business items.

— Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on [www.gulfcouncil.org](http://www.gulfcouncil.org).

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Office of Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA Office of General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: September 14, 2022.

**Key Israel Marquez,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XC351]

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Naval Base San Diego Pier 6 Replacement Project, San Diego, California**

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

**ACTION:** Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

**SUMMARY:** NMFS received a request from the U.S. Navy (Navy) for the renewal of their currently active IHA to take marine mammals incidental to the Naval Base San Diego Pier 6 Replacement Project in San Diego, California. These activities consist of activities that are covered by the current authorization, but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

**DATES:** Comments and information must be received no later October 5, 2022.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to [ITP.Fowler@noaa.gov](mailto:ITP.Fowler@noaa.gov).

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may

be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of

Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

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

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

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

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals](https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals). Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final

decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

##### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA renewal qualifies to be categorically excluded from further NEPA review.

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

##### History of Request

On January 22, 2021, NMFS issued an IHA to the Navy to take California sea lions (*Zalophus californianus*), by Level B harassment only, incidental to the Naval Base San Diego Pier 6 Replacement Project in San Diego, California (86 FR 7993, February 3, 2021), effective from October 1, 2021 through September 30, 2022. On July 29, 2022, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

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

The purpose of the Naval Base San Diego Pier 6 Replacement Project is to remove and replace a decaying and inadequate pier for Navy ships. Specifically, the planned in-water construction work authorized under the initial IHA included removing piles that supported the existing pier and installing new piles using an impact hammer. After first removing the above-water structures and utilities, the Navy planned to remove a total of 1,998 piles, including 1,833 12 to 24-inch (in) square concrete piles, 149 12-inch composite (timber-plastic) piles, and 16 16-inch I-shaped steel piles. Once demolition had opened up space, the Navy planned to begin construction in the same location on a new pier measuring 37 meters (m; 120 feet (ft)) wide by 457 m (1,500 ft) long. New construction work involved impact driving of 966 piles, including 528 24-in octagonal concrete structural piles, 208 24-in square concrete fender piles, four 20-in square concrete piles for a load-out ramp, and 226 16-in fiberglass secondary and corner fender

piles. Pile installation and removal was expected to take no more than 250 days.

Of the planned pile removal and installation activities described in the initial IHA, the Navy removed a total of 1,835 concrete piles over 70 days using a vibratory hammer and installed a total of 526 new concrete piles over 62 days using an impact hammer (Table 1). The Navy also removed 149 12-in composite piles and 16 16-inch I-shaped steel piles using direct pull (*i.e.*, no pile hammer required). All planned pile removal activities described in the initial IHA have been completed. The Navy now proposes to install the remaining piles over the course of approximately 54 days starting in November or early December 2022 and continuing through February 2023.

The types of impacts of the Navy’s proposed activities are identical to those described in the initial IHA. As in the initial IHA, NMFS anticipates that only the U.S. stock of California sea lions may be taken by Level B harassment incidental to underwater noise resulting from construction associated with the remaining proposed activities.

The following documents are referenced in this notice and include important supporting information:

- **Federal Register** notice of proposed initial IHA (85 FR 80027, December 11, 2020);

- **Federal Register** notice of final initial IHA (86 FR 7993, February 3, 2021); and

- Initial IHA application, references cited, IHA renewal request, and preliminary monitoring report (available at [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities)).

*Detailed Description of the Activity*

The purpose of the project is to remove and replace a decaying and inadequate pier built in 1945. A new, wider pier is needed to provide adequate ship berthing infrastructure to support modern Navy ships and fleet readiness. All in-water demolition (*i.e.*, pile removal) and installation of concrete structural piles has been completed. The remaining in-water construction activities to be covered under this IHA renewal include the following:

- Impact installation of 204 2-in square concrete fender piles; and
- Impact installation of 226 16-in round fiberglass fender piles.

TABLE 1—SUMMARY OF COMPLETED AND REMAINING PILE DRIVING ACTIVITIES

Method	Pile type	Number of piles planned in initial IHA	Number of piles completed	Number of piles remaining	Total days of completed work	Total estimated days remaining
Demolition of Existing Pier: Vibratory Extraction, High-pressure Water Jetting, Hydraulic Pile Clipper, and/or Hy- draulic Chainsaw.	24-inch square pre-cast concrete, 20-inch square pre-stressed/pre-cast concrete piles.	1,833	<sup>a</sup> 1,835	0	70	0
	12-inch composite (timber- plastic) piles.	149	<sup>b</sup> 149	0		
	Vibratory Extraction ..... 16-inch I-shaped steel piles	16	<sup>b</sup> 16	0		
Total .....	.....	1,998	1,835	0		
Construction of New Pier: Impact Pile Driving .....	24-inch octagonal concrete structural test piles.	15	9	0	62	54
	24-inch octagonal concrete structural piles.	513	517	0		
	24-inch square concrete fender system test piles.	4	<sup>c</sup> 0	<sup>c</sup> 0		
	24-inch square concrete primary fender piles.	204	0	204		
	20-inch square concrete pile for load-out ramp cradle.	4	<sup>d</sup> 0	<sup>d</sup> 0		
	16-inch fiberglass sec- ondary and corner fender piles.	226	0	226		
Total .....	.....	966	526	430	132	54

<sup>a</sup> Note that the total observed piles removed (1,835 piles) exceeds by two the proposed number of 20-in and 24-in piles described in the initial IHA (1,833 piles). This is likely due to command PSOs double counting piles as a result of difficulties encountered when viewing/tracking the large number of piles removed during the course of demolition activities at Pier 6.

<sup>b</sup> All 12-inch composite piles and 16-inch I-shaped steel piles were removed via direct pull with no vibratory hammer required.

<sup>c</sup> 24-inch square concrete fender system test piles have been removed from the construction plan.  
<sup>d</sup> These 20-inch square concrete piles were changed to 24-inch octagonal concrete piles and are included in the total number of 24-inch octagonal concrete piles installed above.

A detailed description of the construction activities for which authorization of take is proposed here may be found in the **Federal Register** notice of proposed IHA for the initial IHA (85 FR 80027, December 11, 2020). The location, timing (e.g., seasonality), and nature of the pile driving operations, including the type and size of piles and the methods of pile driving, are identical to those analyzed in the initial IHA. The proposed IHA renewal would be effective through September 30, 2023.

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 80027, December 11, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and preliminarily determined that neither this nor any other new information affects which species or

stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 80027, December 11, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notice for the proposed and final initial IHAs (85 FR 80027,

December 11, 2020; 86 FR 7993, February 3, 2021). Specifically, the source levels and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA, with the exception of fewer days of activity since the proposed activities are a subset of those covered in the initial IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA.

Based on the number of piles to be installed, the Navy estimates that the remaining activity would take 54 days (Table 1). As in the initial IHA, the Navy estimates four California sea lions could be present in the project area each day. Multiplication of the above estimate of animals per day (4) times the days of work (54) results in an estimated 216 Level B harassment takes of California sea lions (Table 2). The Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches within 20 m of the project site, which encompasses all Level A harassment ensonification zones. Therefore, no take by Level A harassment is anticipated or proposed to be authorized.

TABLE 2—ESTIMATED TAKE PROPOSED FOR AUTHORIZATION AND PROPORTION OF STOCK POTENTIALLY AFFECTED

Species	Days of activity remaining	Estimated daily occurrence (# per day)	Proposed take by Level B harassment	Proposed take by Level A harassment	Percent of stock
California sea lion ( <i>Zalophus californianus</i> ) U.S. Stock .....	54	4	216	0	0.08

*Description of Proposed Mitigation, Monitoring and Reporting Measures*

With the exception of measures specific to vibratory pile removal that are not relevant to this IHA renewal, the proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (86 FR 7993, February 3, 2021), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Mitigation

*Establishment of Shutdown Zones—* The Navy would establish shutdown zones for all pile driving and removal

activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group (Table 3). In this case there is only one species affected and all Level A harassment isopleths are less than 10 m radius. To be conservative, the Navy would establish a 20 m shutdown zone for all pile driving or removal activities.

The placement of Protected Species Observers (PSOs) during all pile driving and removal activities (described in detail in the Monitoring section below) would ensure that the entire shutdown zone is visible during pile installation.

Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (e.g., fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile).

The Navy would conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

For marine mammal species for which take by Level B harassment has not been authorized, in-water pile driving would shut down immediately if such species are observed within or entering the Level B harassment zone.

If take reaches the authorized limit for an authorized species, pile installation would be stopped as these species approach the Level B harassment zone to avoid additional take.

**Monitoring for Level B Harassment**—The Navy would monitor the Level A and B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of PSOs would allow PSOs to observe marine mammals within the Level B harassment zones.

**Soft Start**—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period. This procedure would be conducted three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

**Pre-activity Monitoring**—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start would not proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment

take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take would be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence.

#### Monitoring

Marine mammal monitoring during pile driving and removal would be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator would be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- The Navy would submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Up to four PSOs would be employed. PSO locations would provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations are as follows:

(1) At the pile driving/removal site or best vantage point practicable to monitor the shutdown zones;

(2) For activities with Level B harassment zones larger than 400 m (*i.e.*, water jetting), two additional PSO locations would be used. One would be across from the project location along Incheon Road at Naval Amphibious Base Coronado; and

(3) Two additional PSOs would be located in a small boat. The boat would conduct a pre-activity survey of the entire monitoring area prior to in-water construction. The boat would start from south of the project area (where potential marine mammal occurrence is lowest) and proceed to the north. When the boat arrives near the northern boundary of the Level B harassment zone (*e.g.*, just north of the western side of the Coronado Bridge as depicted in the Figures in the monitoring plan) it would set up a station so the PSOs are best situated to detect any marine mammals that may approach from the north. The two PSOs aboard would split monitoring duties in order to monitor a 360 degree sweep around the vessel with each PSO responsible for 180 degrees of observable area.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving or drilling equipment is no more than 30 minutes.

**Hydroacoustic Monitoring and Reporting**—The Navy has volunteered to conduct hydroacoustic monitoring of all pile driving and removal methods. Data would be collected for a representative number of piles (three to five) for each pile size and/or type. As part of the below-mentioned report, or in a separate report with the same timelines as above, the Navy would provide an acoustic monitoring report for this work. Hydroacoustic monitoring results could be used to adjust the size of the Level B harassment and monitoring zones after a request is made and approved by NMFS. The acoustic

monitoring report would, at minimum, include the following:

- Hydrophone equipment and methods: recording device, sampling rate, distance (m) from the pile where recordings were made; depth of recording device(s);
- Type of pile being driven or removed, substrate type, method of driving or removal during recordings;
- For impact pile driving: Pulse duration and mean, median, and maximum sound levels (dB re: 1 $\mu$ Pa): SELcum, peak sound pressure level (SPLpeak), and single-strike sound exposure level (SELS-s);
- For non-impulsive sources (e.g., water jetting): Mean, median, and maximum sound levels (dB re: 1 $\mu$ Pa): root mean square sound pressure level (SPLrms), SELcum; and
- Number of strikes (impact) or duration (non-impulsive sources) per pile measured, one-third octave band spectrum and power spectral density plot.

#### Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (i.e., impact or vibratory and if other removal methods were used);
- Weather parameters and water conditions during each monitoring period (e.g., wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving was occurring at time of sighting);
- Description of any marine mammal behavior patterns during observation,

including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone;
- Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any; and
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments would be submitted within 30 days after receipt of comments.

#### Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy would report the incident to the Office of Protected Resources (OPR), NMFS, and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The Navy would not resume their activities until notified by NMFS. The report would include the following information:

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

#### Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (85 FR 80027, December 11, 2020) and solicited public comments on both our proposal

to issue the initial IHA for the Naval Base San Diego Pier 6 Replacement Project and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no public comments.

#### Preliminary Determinations

The construction activities proposed by the Navy are a subset of those analyzed in the initial IHA, as are the method of taking and the effects of the action. The planned number of days of activity are reduced given the completion of a portion of the originally planned work. The potential effects of the Navy's activities are limited to Level B harassment in the form of behavioral disturbance and temporary threshold shift. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (e.g., less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

#### Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed marine

mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

### Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for conducting the Naval Base San Diego Pier 6 Replacement Project in San Diego, California, effective through September 30, 2023, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: September 14, 2022.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2022-20265 Filed 9-19-22; 8:45 am]

**BILLING CODE 3510-22-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

**TIME AND DATE:** 10:30 a.m. EDT, Wednesday, September 21, 2022.

**PLACE:** CFTC headquarters office, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.cftc.gov/>.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202-418-5964.

*Authority:* 5 U.S.C. 552b.

Dated: September 16, 2022.

**Christopher Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2022-20482 Filed 9-16-22; 4:15 pm]

**BILLING CODE 6351-01-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

**TIME AND DATE:** 10:30 a.m. EDT, Thursday, September 22, 2022.

**PLACE:** CFTC headquarters office, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.cftc.gov/>.

**CONTACT PERSON FOR MORE INFORMATION:**

Christopher Kirkpatrick, 202-418-5964.

*Authority:* 5 U.S.C. 552b.

Dated: September 16, 2022.

**Christopher Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2022-20483 Filed 9-16-22; 4:15 pm]

**BILLING CODE 6351-01-P**

### CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 22-C0005]

#### Clawfoot Supply, LLC

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission publishes in the **Federal Register** any settlement that it provisionally accepts under the Consumer Product Safety Act. Published below is a provisionally accepted Settlement Agreement with Clawfoot Supply, LLC containing a civil penalty in the amount of six million (\$6,000,000), subject to the terms and conditions of the Settlement Agreement. The Commission voted unanimously (5-0) to provisionally accept the proposed Settlement Agreement and Order pertaining to Clawfoot Supply, LLC. Commissioner Feldman issued a statement with his vote which can be found here: <https://www.CPSC.gov>.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 5, 2022.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to Comment 22-C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway,

Bethesda, MD 20814; telephone: (240) 863-8938 (mobile), (301) 504-7479 (office); email: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Madeleine Mietus, Trial Attorney, Division, of Enforcement and Litigation, Office of Compliance and Field Operations, Consumer Product, Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814-4408; [mmieuts@cpsc.gov](mailto:mmieuts@cpsc.gov).

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: September 15, 2022.

**Alberta E. Mills,**

*Secretary.*

#### United States of America

#### Consumer Product Safety Commission

*In the Matter of:* CLAWFOOT SUPPLY, LLC

CPSC Docket No.: 22-C0005

#### Settlement Agreement

1. In accordance with the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2051-2089, and 16 CFR 1118.20, Clawfoot Supply, LLC ("Clawfoot Supply") and the United States Consumer Product Safety Commission ("Commission"), through its staff, hereby enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order resolve staff's charges set forth below.

#### *The Parties*

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051-2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Clawfoot Supply is a wholly owned subsidiary of Ferguson Enterprises, LLC ("Ferguson Enterprises") and is organized and existing under the laws of the state of Kentucky, with its principal place of business in Erlanger, Kentucky.

#### *Staff Charges*

4. Between 2011 and 2018, Clawfoot Supply imported, distributed, and offered for sale approximately 7,200 Wall-Mounted Teak Folding Shower Seats ("Shower Seats" or "Subject Products").

5. The Shower Seats are "consumer products" that were "distribut[ed] in commerce," as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. 2052(a)(5), (8). Clawfoot Supply is a "manufacturer"