

direct rental assistance pilot or demonstration?

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[Docket No. FWS-R7-ES-2024-0054; FXES111607MRG01-245-FF07CAMM00]

**Marine Mammals; Incidental Take During Specified Activities; Proposed Incidental Harassment Authorization for Southcentral Alaska Stock of Northern Sea Otters in Whittier, AK; Draft Environmental Assessment**

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

**ACTION:** Notice of receipt of application and proposed authorization; notice of availability of draft environmental assessment; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS), in response to a request under the Marine Mammal Protection Act of 1972, as amended, from Turnagain Marine Construction, propose to authorize nonlethal, incidental take by harassment of small numbers of Southcentral Alaska stock northern sea otters (*Enhydra lutris kenyoni*) from July 19, 2024, to July 18, 2025. The applicant has requested this authorization for take by harassment that may result from activities associated with pile driving and marine construction activities on the western shore of Passage Canal in Whittier, Alaska. We estimate that this project may result in the nonlethal incidental take by harassment of up to 162 northern sea otters from the Southcentral stock. This proposed authorization, if finalized, will be for up to 17 takes of northern sea otters by Level A harassment and 145 takes of northern sea otters by Level B harassment. Neither the applicant nor the FWS anticipated any lethal take, and the FWS does not propose to authorize any lethal take. We invite comments on the proposed incidental harassment authorization and the accompanying draft environmental assessment from the public, and local, State, Tribal and Federal agencies.

**DATES:** Comments must be received by August 22, 2024.

**ADDRESSES:** *Document availability:* You may view the application package, supporting information, the draft environmental assessment, and the list of references cited herein at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2024-0054, or you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Comment submission:* You may submit comments on the proposed authorization by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-ES-2024-0054.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R7-ES-2024-0054, 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.

**FOR FURTHER INFORMATION CONTACT:** Charles Hamilton, by email at [R7mmmregulatory@fws.gov](mailto:R7mmmregulatory@fws.gov), or by telephone at 1-800-362-5148 or 1-907-786-3800. 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:**

**Background**

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment 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) in a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (FWS, or we).

According to the MMPA, the FWS shall allow this incidental taking by harassment if we make findings that the total of such taking for the 1-year period:

1. Is of small numbers of marine mammals of a species or stock;
2. Will have a negligible impact on such species or stocks; and
3. Will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

1. Permissible methods of taking;
2. 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
3. Requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term “take” means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal. “Harassment” 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 considerations when reviewing requests for incidental harassment authorizations (IHA) 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. For this IHA, 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.

If the requisite findings are made, we shall issue an IHA, which may set forth the following, where applicable: (i) permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to

rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal-dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting take by harassment.

#### Summary of Request

On March 1, 2024, Turnagain Marine Construction (hereafter, TMC or the applicant) submitted a request to the FWS for an authorization to take by Level A harassment and Level B harassment a small number of northern sea otters (*Enhydra lutris kenyoni*) (hereafter, sea otters or otters unless another species is specified) from the Southcentral Alaska stock. The FWS sent a request for additional information on March 15, 2024. We received updated versions of the request on March 18, 2024. The FWS determined the March 18, 2024, application to be adequate and complete. The applicant expects take by harassment may occur during the construction of their cruise ship berth and associated facilities on the western shore of Passage Canal in Whittier, Alaska.

#### Description of Specified Activities and Specified Geographic Region

The specified activity (hereafter project) will include installation and removal of piles for the construction of

a 152-by-21-meter (m) (500-by-70-foot (ft)) floating cruise ship dock in Whittier, Alaska (figure 1). The applicant, TMC, plans to install and remove 15 temporary steel piles, each of which will be 91 centimeters (cm) (36 inches (in)) in diameter, and expects to install 7 permanent steel piles, each 91 cm (36 in) in diameter, and 8 permanent steel piles, each 122 cm (48 in) in diameter. Dock components that will be installed out of water include bull rail, fenders, mooring cleat, pre-cast concrete dock surface, and mast lights. Pile-driving activities will occur over 31 non-consecutive days for approximately 70 hours between July 19, 2024, and July 18, 2025. If the IHA is issued after TMC's intended start date, its schedule for conducting the specified activities may be adjusted accordingly. Pile installation will be done with a combination of impact, vibratory, and down-the-hole (DTH) drilling. Temporary piles will be removed with the vibratory hammer. Materials and equipment will be transported via barges and workers will be transported to and from the barge work platform via skiff.

Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

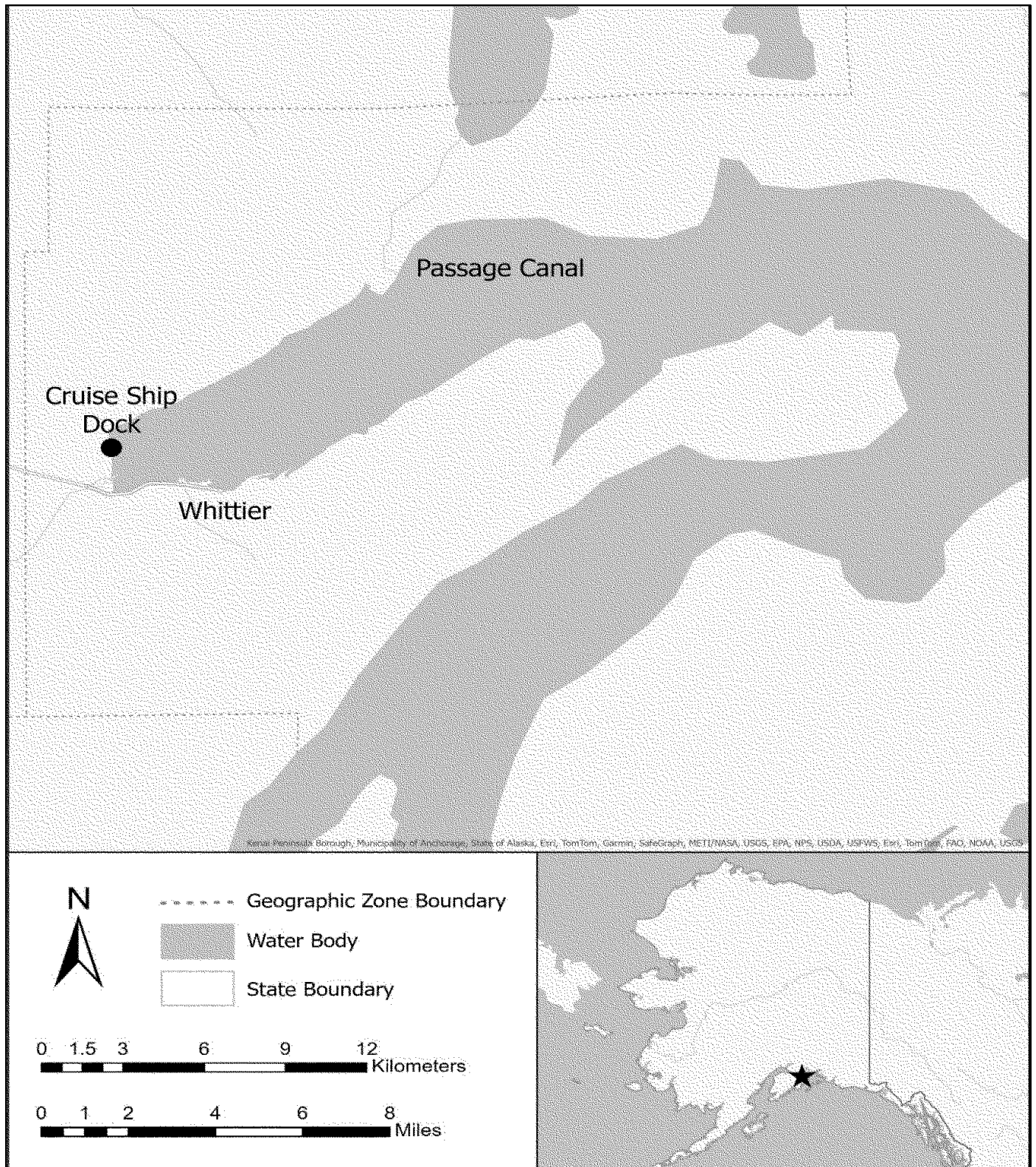


Figure 1. Specified geographic region of the project.

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

The northern sea otter is the only species of marine mammal under FWS jurisdiction likely found within the specified geographic region. Information on range, stocks, and biology of sea otters can be found in the supplemental information (available as described above in ADDRESSES).

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

#### Effects of Noise on Sea Otters

We characterize “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” and “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. No lethal take is anticipated nor was authorization of lethal take requested by the applicant. Therefore, none will be authorized.

#### Sea Otter Hearing

Pile driving and marine construction activities produce sound that 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 that of 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 and 1 kHz were between 116 and 101 decibels (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

##### Underwater Sounds

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (which entails the potential for 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 hearing sensitivity (*i.e.*, a permanent threshold shift (PTS) (NMFS 2018)). A PTS occurs when noise exposure causes hairs within the inner ear system to die (Ketten 2012). Although the effects of PTS are, by definition, permanent, PTS does not equate to total hearing loss.

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. The 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). The TTS is a noise-induced threshold shift in hearing sensitivity that fully recovers over time (Finneran 2015). Southall and colleagues (2019) predict that 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 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. 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) and 178 dB SEL (148 dB, 15 minutes). 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 for impulsive sounds and 199 dB SEL for nonimpulsive sounds.

The 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 and 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 and 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 (SPL) of 140, 160, and 180 dB, respectively.

We have evaluated these thresholds and determined that the Level B harassment 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 playback studies from the 1980s, as well as 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 FWS has set 160 dB of received underwater sound as a threshold for Level B take by disturbance for sea otters for this IHA. Exposure to 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 FWS as Level B harassment. Thresholds for Level A harassment (which entails the potential for injury) for in-water sounds between 125 Hz and 38 kHz will be 232 dB peak or 203 dB SEL for impulsive sounds and

219 dB SEL for continuous sounds (table 1).

*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. 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.

TABLE 1—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 INCLUDE SEA OTTERS \*

	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

\* 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).

*Evidence From Sea Otter Studies*

Individual sea otters in Passage Canal will likely show a range of responses to noise from pile-driving activities. Some sea otters will likely dive, show startle responses, change direction of travel, 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 (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, will not be displaced.

Additional information on the evidence from studies about how sea otters may be affected by sound can be found in the supplemental information to this document (available as described above in ADDRESSES).

*Consequences of Disturbance*

Information on the consequences of disturbance to sea otters can be found in the supplemental information to this document (available as described above in ADDRESSES).

*Vessel Activities*

Vessel activity during the project includes the transit of three barges for materials and construction, all of which will remain on site, mostly stationary, to support the work; additionally, two skiffs will be used during the project: one for transporting workers short distances to the crane barge and the other for marine mammal monitoring

during pile driving. Vessels will not be used extensively or over a long duration during the planned work; therefore, we do not anticipate that sea otters will experience changes in behavior indicative of tolerance or habituation.

Additional information on vessel activities can be found in the supplemental information to this document (available as described above in ADDRESSES).

*Effects on Sea Otter Habitat and Prey*

Information on the potential impacts of the specified activities on sea otter prey species can be found in the supplemental information to this document (available as described above in ADDRESSES).

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

The planned specified activities will occur near marine subsistence harvest areas used by Alaska Native peoples from Whittier and the surrounding areas. The majority of sea otter harvest in this area occurs more than 3.2

kilometers (km) (2 miles [mi]) outside of Whittier. Since 2012, there have been 75 sea otters harvested in the Whittier area, and most of those were taken prior to 2017. From 2018 through 2021, only eight sea otters were harvested from the Whittier area.

The planned project would occur within the Whittier city limits, where firearm use is prohibited. The area potentially affected by the planned project does not significantly 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. Despite no conflict with subsistence use being anticipated, the FWS will conduct 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, TMC will develop a plan of cooperation specifying the 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 potential types of take of northern sea otters. The FWS does not anticipate and is not proposing to authorize lethal take as a part of this proposed IHA, nor did the applicant request authorization of lethal take; however, the definitions of these take types are provided for context and background.

**Lethal Take**—Human activity may result in biologically significant impacts to northern sea otters. In the most serious interactions, human actions can result in the 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 behaviors or activities, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Human-caused changes in behavior that disrupt biologically significant behaviors or activities for the

affected animal indicate take by Level B harassment under the MMPA.

The FWS has identified the following sea otter behaviors as indicative of 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 also be indicative of 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 FWS does not view such minor changes in behavior as indicative of Level B 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 A harassment or Level B harassment due to exposure to underwater noise. Spatially explicit zones of ensonification were established around the planned 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 Esslinger et al. (2021).

The project can be divided into four major components: DTH drilling, vibratory drilling, pile driving using an impact driver, and skiff use to support construction. Each of these components will generate a different type of in-water noise. Vibratory drilling and the use of skiffs will produce nonimpulsive or continuous noise; impact driving will produce impulsive noise; and DTH 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 2 through 5. We used the empirical data from those proxy projects with the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which sound levels would attenuate to Level A harassment thresholds (table 1). To estimate the distances at which sounds would attenuate to Level B harassment thresholds (table 1), we used the data from the proxy projects with the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities in a practical spreading loss model (NMFS 2020) to determine the distance at which sound levels attenuate to 160 dB re 1  $\mu$ Pa. The weighting factor adjustment included in the NMFS user spreadsheet accounts for sounds 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 practical spread (NMFS 2020).

We calculated the harassment zones for DTH drilling with input from NMFS. The SPLs produced by DTH drilling were provided by NMFS in 2022 via correspondence with Solstice Alaska Consulting, who created the application for this IHA on behalf of TMC, as well as from the NMFS proposed IHA for this project in 2023. We then used the provided SPLs with the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which these sounds would attenuate to Level A harassment thresholds. To estimate the distances at which sounds would attenuate to Level B harassment thresholds, we used the provided SPLs with a NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities in a practical spreading loss model (NMFS 2020) to determine the distance at which sound levels attenuate to 160 dB re 1  $\mu$ Pa. To ensure the most conservative harassment thresholds, peak SPL of 194 dB re 1  $\mu$ Pa (Heyvaert and Reyff 2021) was included in the calculations of Level B harassment thresholds for DTH pile driving. However, due to the differences in how PTS and TTS thresholds are calculated, as well as limited data of underwater

SPLs from DTH drilling, the resultant 122-cm (48-in) steel piles are larger than Level A isopleths for DTH installation of the Level B isopleths.

TABLE 2—SUMMARY 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 A AND LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE BY VIBRATORY DRILLING

Pile size	91-cm (36-in) (temporary)–installation	91-cm (36-in) (temporary)–removal	91-cm (36-in) (permanent)	122-cm (48-in) (permanent)
Total number of piles	15	15	7	8.
Sound level	166 dB re 1μPa at 10 m (RMS)			168.2 dB re 1μPa at 10 m (RMS).
Source	NAVFAC <sup>a</sup> 2015			Austin et al. 2016.
Timing per pile	10 minutes/pile	10 minutes/pile	15 minutes/pile	15 minutes/pile.
Maximum number of piles per day	4	4	4	2.
Maximum number of days of activity	4	4	2	4.
Sea otter density	2.03 sea otters/km <sup>2</sup>			
Distance to below Level A harassment threshold	0.5 meters	0.5 meters	0.6 meters	0.6 meters.
Level A area (km <sup>2</sup> )	0.000001	0.000001	0.000001	0.000001.
Potential sea otters affected by Level A sound per day	0.000002	0.000002	0.000002	0.000002.
Potential sea otters affected by Level A sound per day (rounded)	0	0	0	0.
Total potential Level A harassment events	0	0	0	0.
Distance to below Level B harassment threshold	25 meters	25 meters	25 meters	35 meters.
Level B area (km <sup>2</sup> )	0.002	0.0020	0.0020	0.0038.
Potential sea otters affected by Level B sound per day	0.0040	0.0040	0.004	0.0078.
Potential sea otters affected by Level B sound per day (rounded)	0	0	0	0.
Total potential Level B harassment events	0	0	0	0.

<sup>a</sup>Naval Facilities Engineering Command.

TABLE 3—SUMMARY 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 A AND LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE BY IMPACT PILE DRIVING

Pile size	91-cm (36-in) (permanent)	122-cm (48-in) (permanent)
Total number of piles	7	8.
Sound level	184 dB (SEL)/192 dB (RMS)/211 dB (peak) re 1μPa at 10 m.	186.7 dB (SEL)/198.6 dB (RMS)/212 dB (peak) re 1μPa at 10 m.
Source	NAVFAC 2015	Austin et al. 2016.
Timing per pile	45 minutes/pile; 1,800 strikes/pile	60 minutes/pile; 2,400 strikes/pile.
Maximum number piles per day	4	2.
Maximum number of days of activity	2	4.
Sea otter density	2.03 sea otters/km <sup>2</sup> .	
Distance to below Level A harassment threshold.	169.2 meters	195.4 meters.
Level A area (km <sup>2</sup> )	0.0718	0.1199.
Potential sea otters affected by Level A sound per day.	0.1458	0.2435.
Potential sea otters affected by Level A sound per day (rounded).	1	1.
Total potential Level A harassment events	2	4.
Distance to below Level B harassment threshold.	1,359 meters	3,744 meters.
Level B area (km <sup>2</sup> )	1.9161	7.8846.
Potential sea otters affected by Level B sound per day.	3.8897	16.0058
Potential sea otters affected by Level B sound per day (rounded).	4	16.
Total potential Level B harassment events	8	64.

**TABLE 4—SUMMARY 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 A AND LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE BY DOWN-THE-HOLE DRILLING**

Pile size	91-cm (36-in) (temporary)	91-cm (36-in) (permanent)	122-cm (48-in) (permanent)
Total number of piles	10 (installation only).	7	8.
Sound level	164 dB (SEL)/174 dB (RMS)/194 (peak) re 1μPa at 10 m.		171 dB (SEL)/ 174 (RMS)/ 194 (peak) dB re 1μPa at 10 m.
Source	Reyff and Heyvaert 2019; Reyff 2020; Denes et al. 2019; Heyvaert and Reyff 2021; NMFS 2023.		SolsticeAK 2022; Heyvaert and Reyff 2021; NMFS 2023.
Timing per pile	60 minutes/pile	150 minutes/pile.	150 minutes/pile.
Maximum number piles per day	4	2	2.
Maximum number of days of activity	3	4	4.
Sea otter density	2.03 sea otters/km <sup>2</sup> .		
Distance to below Level A harassment threshold	57.9 meters	67.1 meters	196.6 meters. <sup>a</sup>
Level A area (km <sup>2</sup> )	0.0105	0.0141	0.1214.
Potential sea otters affected by Level A sound per day	0.0214	0.0287	0.2465.
Potential sea otters affected by Level A sound per day (rounded)	1	1	1.
Total potential Level A harassment events	3	4	4.
Distance to below Level B harassment threshold	85.8 meters	85.8 meters	85.8 meters. <sup>a</sup>
Level B area (km <sup>2</sup> )	0.0231	0.0231	0.0231.
Potential sea otters affected by Level B sound per day	0.0469	0.0469	0.0469.
Potential sea otters affected by Level B sound per day (rounded)	1	1	1.
Total potential Level B harassment events	3	4	4.

<sup>a</sup> Due to differences in how PTS and TTS thresholds are calculated, the Level A isopleths are larger than the Level B isopleths.

**TABLE 5—SUMMARY 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 A AND LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE BY USE OF SKIFFS**

Sound source	Monitoring skiff	Worker transit skiff
Sound level	175 dB (RMS) re 1μPa at 1 m	175 dB (RMS) re 1μPa at 1 m.
Source	Richardson et al. 1995; Kipple and Gabriele 2007.	
Number of days of vessel use	31	31.
Sea otter density	2.03 sea otters/km <sup>2</sup> .	
Distance to below Level A harassment threshold.	0 meters	0 meters.
Level A area (km <sup>2</sup> )	0	0.
Potential sea otters affected by Level A sound per day.	0	0.
Potential sea otters affected by Level A sound per day (rounded).	0	0.
Total potential Level A harassment events	0	0.
Distance to below Level B harassment threshold.	10 meters	10 meters.
Level B area (km <sup>2</sup> )	0.2832	0.0095.
Potential sea otters affected by Level B sound per day.	0.5748	0.0192.
Potential sea otters affected by Level B sound per day (rounded).	1	1.



TABLE 5—SUMMARY 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 A AND LEVEL B HARASSMENT ENSONIFICATION AREA, AND TOTAL OTTERS EXPECTED TO BE HARASSED THROUGH BEHAVIORAL DISTURBANCE BY USE OF SKIFFS—Continued

Sound source	Monitoring skiff	Worker transit skiff
Total potential Level B harassment events	31 .....	31.

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) SPL as it is more conservative than SEL<sub>CUM</sub> 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 1 μPa due to pile driving, we multiplied the area ensonified to >160 dB re 1 μPa by the density of animals (2.03 sea otters per square kilometer (km<sup>2</sup>)) derived from surveys conducted of Prince William Sound (Esslinger et al. 2021). We applied the same methodology to determine the number of sea otters that may experience sounds capable of causing PTS. The number of sea otters expected to be exposed to such sound levels can be found in tables 2 through 5. To calculate the area ensonified for each type of pile-driving activity, the coordinates of the piles were mapped in ArcGIS Pro. We used a representative pile of each size around which to map the Level A harassment and Level B harassment zones. We chose representative piles that were farthest from shore so that the zones that are intercepted by land have the largest in-water areas possible. The majority of these radii are small enough that their defined circles will fall entirely in the water, and in these instances, the area was calculated as πr<sup>2</sup>. The exceptions are the Level A and Level B zones generated by impact pile driving the 91-cm (36-in) permanent piles as well as the Level B zone generated by impact pile driving the 122-cm (48-in) piles; for these, we used ArcGIS Pro to map and calculate the area of the water ensonified by those activities.

The area ensonified by the worker transit skiff was estimated by multiplying the vessel’s anticipated daily track length by twice the 160 dB radius plus πr<sup>2</sup> to account for the rounded ends of the track line. It was estimated that the distance of each trip would be no more than 457.2 m (1,500 ft). The worker transit skiff transports crew between shore and the work platform. It will be in use the same days that pile driving occurs but is not

expected to be used while piles are being driven.

The monitoring skiff will travel in a triangle of perimeter approximately 7 km (4.3 mi) between Emerald Island, the north shore of Passage Canal, and Gradual Point during pile driving activities, but outside the largest Level B harassment threshold. To estimate the area ensonified by the monitoring skiff, we used ArcGIS Pro to plot the points of the triangle, map the track line between those points, and apply a buffer of 10 m (33 ft; the 160-dB radius) on either side of the track line.

We assumed that the different types of pile-driving activities would occur sequentially and that the total number of days of work would equal the sum of the number of days required to complete each type of pile-driving activity. 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.

In order to minimize exposure of sea otters to sounds above Level A harassment thresholds, TMC will implement shutdown zones ranging from 10 to 200 m (33 to 656 ft), based on the pile size and type of pile driving or marine construction activity, where operations will cease should a sea otter enter or approach the specified zone. Soft-start and zone clearance prior to startup will also limit the exposure of sea otters to sound levels that could cause PTS. However, TMC has requested, and the FWS proposes to authorize, small numbers of take by Level A harassment during impact pile driving and DTH drilling.

Although sea otters are non-migratory, they typically move amongst focal areas within their home ranges to rest and forage (Garshelis and Garshelis 1984; Laidre et al. 2009). It is possible that, given the large variability in individual home range sizes and the potential for

up to daily movement in and out of foraging or resting areas, different individual sea otters could be found within the ensonification zone each day of the project. Thus, the FWS conservatively assumes that the 162 estimated harassment events may impact up to 162 different sea otters.

*Critical Assumptions*

We estimate that 145 takes of 145 sea otters by Level B harassment and 17 takes of 17 sea otters by Level A harassment may occur due to TMC’s planned cruise ship dock construction activities. In order to conduct this analysis and estimate the potential amount of take by harassment, several critical assumptions were made.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience biologically significant consequences.

We used the sea otter density for the Whittier area from surveys and analyses conducted by Esslinger et al. (2021). Methods and assumptions for these surveys can be found in the original publication.

We used sound source verification from recent pile-driving activities in a number of locations within and beyond Alaska to generate sound level estimates for construction activities.

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 practical 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*

The applicant plans to conduct pile driving and marine construction

activities in Whittier, Alaska, over the course of a year from the date of issuance of the IHA. A summary of total estimated take during the project by source is provided in table 6.

TABLE 6—TOTAL ESTIMATED TAKES BY SOURCE OF LEVEL A HARASSMENT AND LEVEL B HARASSMENT OF SEA OTTERS

Source	Number of days of activity	Sea otters exposed per day to Level A harassment	Total takes of sea otters by Level A harassment	Sea otters exposed per day to Level B harassment	Total takes of sea otters by Level B harassment
Vibratory drilling:					
91-cm (36-in) (temporary)—installation .....	4	0	0	0	0
91-cm (36-in) (temporary)—removal .....	4	0	0	0	0
91-cm (36-in) (permanent) .....	2	0	0	0	0
122-cm (48-in) (permanent) .....	4	0	0	0	0
Impact drilling:					
91-cm (36-in) (permanent) .....	2	1	2	4	8
122-cm (48-in) (permanent) .....	4	1	4	16	64
Down-the-hole drilling:					
91-cm (36-in) (temporary)—installation .....	3	1	3	1	3
91-cm (36-in) (permanent) .....	4	1	4	1	4
122-cm (48-in) (permanent) .....	4	1	4	1	4
Skiff use:					
Monitoring skiff .....	31	0	0	1	31
Worker transit skiff .....	31	0	0	1	31
Totals .....	93	5	17	25	145

Over the course of the project, we estimate 145 instances of take by Level B harassment of northern sea otters from the Southcentral Alaska stock due to behavioral responses and/or TTS associated with noise exposure. Although multiple instances of Level B harassment of individual sea otters are possible, 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.

The use of soft-start procedures, zone clearance prior to startup, and shutdown zones is likely to decrease both the number of sea otters exposed to sounds above Level A harassment thresholds and the exposure time of any sea otters venturing into a Level A harassment zone. This reduces the likelihood of losses of hearing sensitivity that might impact the health, reproduction, or survival of affected animals. Despite the implementation of mitigation measures, it is anticipated that some sea otters will experience Level A harassment via exposure to underwater sounds above threshold criteria during impact and DTH pile-driving activities. Due to sea otters' small body size and low profile in the water, as well as the relatively large size of the Level A harassment zone associated with these activities, we anticipate that sea otters will at times avoid detection before entering Level A harassment zones for those activities. We anticipate that protected species

observers (PSO) will be able to reliably detect and prevent take by Level A harassment of sea otters up to 10 m away; conversely, we anticipate that at distances greater than 10 m, sea otters will at times avoid detection. Throughout the project, we estimate 17 instances of take by Level A harassment of sea otters.

**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 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 retreating from the project area. We expect that affected sea otters will tolerate this exertion without measurable effects on health or reproduction. Most of the anticipated takes will be due to short-term Level B harassment in the form of TTS, startling reactions, or temporary displacement. While mitigation measures incorporated into TMC's request will reduce occurrences of Level A harassment to the extent practicable, a small number

of take by Level A harassment would be authorized for impact and DTH pile-driving activities, which have Level A harassment zone radii ranging in size from 57.9 to 196.6 m (190 to 645 ft).

With the adoption of the mitigation measures incorporated in TMC's request and required by this proposed IHA, 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 FWS 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. Here, predicted levels of take were determined based on the estimated density of sea otters in the project area and ensonification zones developed using empirical evidence from similar geographic areas.

We estimate that TMC's specified activities in the specified geographic region will take no more than 145 takes of 145 sea otters by Level B harassment and 17 takes of 17 sea otters by Level A harassment during the 1-year period of this proposed IHA (see *Sum of Harassment from All Sources*). Take of 162 animals is 0.7 percent of the best available estimate of the current Southcentral Alaska stock size of 21,617 animals (Esslinger et al. 2021) ((162÷21,617)×100≈0.7) and represents a

“small number” of sea otters of that stock.

*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 Southcentral Alaska stock 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 applicant-provided materials, information in our files and datasets, published reference materials, and species experts.

Sea otters are likely to respond to planned 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. Sea otters may move in and out of the project area during pile driving activities, leading to as many as 162 individuals experiencing one day of exposure. However, it is possible that an individual may enter the ensonification area more than once during the project. At most, if the same sea otter enters the ensonification area every day that pile driving occurs, the sea otter would be exposed to pile driving and marine construction noise for up to 31 days. However, injuries (*i.e.*, Level A harassment or PTS) due to chronic sound exposure are 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 pile driving is small (less than 0.13 km<sup>2</sup>), and an animal that may be disturbed could 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 162 incidental takes of up to 162 sea otters from the Southcentral 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.

Currently, the best available scientific information indicates that the density of sea otters in the project area is 2.03 sea otters/km<sup>2</sup> (Esslinger et al. 2021). However, during similar marine construction and pile-driving activities in Whittier under an existing IHA, PSOs collected data which indicate that the proposed project activities may be less impactful than estimated (table 7). No recorded takes by Level A harassment occurred during similar work in Whittier between May 2023 and February 2024, and only 5 takes by Level B harassment occurred over those 10 months.

TABLE 7—TOTAL NUMBERS OF OBSERVATIONS, INDIVIDUALS, AND TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT OF SEA OTTERS UNDER THE INITIAL IHA

Year	Month	Number of sightings	Number of individual sea otters	Number of takes by Level A harassment	Number of takes by Level B harassment	
2023	May	1	6	0	0	
	June	1	1	0	0	
	July	1	1	0	0	
	August	5	5	0	0	
	September	13	13	0	3	
	October	18	22	0	2	
	November	7	11	0	0	
	December	9	15	0	0	
	2024	January	6	3	0	0
		February	1	1	0	0
	Total		62	78	0	5

Our proposed finding of negligible impact applies to incidental take associated with the specified activities as mitigated by the avoidance and minimization measures identified in TMC’s mitigation and monitoring plan. 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 IHA. For these reasons, we propose a finding that the specified project will have a negligible impact on the Southcentral Alaska stock of northern sea otters.

*Least Practicable Adverse Impacts*

We find that the mitigation measures required by this proposed IHA will affect 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, TMC will implement mitigation measures, including the following:

- Using the smallest diameter piles practicable while minimizing the overall number of piles;
- Using a project design that does not include dredging or blasting;
- Using pile caps made of high-density polyethylene or ultra-high-molecular-weight polyethylene softening materials during impact pile driving;
- Minimizing the use of the impact hammer to the extent possible by using a vibratory hammer to advance piles as deeply as possible;
- Employing an 18-m (60-ft) deep bubble curtain during all impact pile driving as well as during all pile-driving activities in less than 18 m (60 ft) of water to reduce noise impacts;
- Development of a marine mammal monitoring and mitigation plan;
- Establishment of shutdown and monitoring zones;
- Visual mitigation monitoring by designated PSOs;
- Site clearance before startup;
- Soft-start procedures; and
- Shutdown procedures.

#### *Impact on Subsistence Use*

The project will not preclude access to harvest areas or interfere with the availability of sea otters for harvest. Additionally, the planned cruise ship berth and associated facilities are located within the City of Whittier, where firearm use is prohibited. We therefore propose a finding that TMC'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 proposed finding, we considered the timing and location of the planned activities and the timing

and location of subsistence harvest activities in the project area.

#### **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 FWS 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 formal reports. TMC must submit monthly reports for all months during which noise-generating work takes place as well as a final monitoring report that must be submitted no later than 90 days after the expiration of the IHA. We will require approval of the monitoring results for continued operation under the IHA.

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.

#### **Required Determinations**

##### *National Environmental Policy Act*

We have prepared a draft environmental assessment in accordance with the National Environmental Policy Act (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 145 takes and by Level A harassment of up to 17 takes from the Southcentral Alaska stock of northern sea otters in the specified geographic region during the specified activities during the regulatory period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this proposed IHA 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*

Under the Endangered Species Act (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. The specified activities would occur entirely within the range of the Southcentral Alaska stock of northern sea otters, which is not listed as threatened or endangered under the ESA. The authorization of incidental take of northern sea otters and the measures included in the proposed IHA would not affect other listed species or designated critical habitat.

##### *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 Alaska Native Claims Settlement Act (ANCSA) corporations 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 Tribal organizations and communities. 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 Secretary's 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 specified activities on federally recognized Alaska Native Tribes and organizations. The FWS has determined that, due to this project's locations and activities, the Tribal organizations and communities near Whittier, Alaska, as well as relevant Alaska Native Claims Settlement Act (ANCSA) corporations, will not be impacted. Regardless, we will be reaching out to the Tribal organizations and ANCSA corporations

to inform them of the availability of this proposed IHA 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 IHA process.

#### *Paperwork Reduction Act*

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with IHAs and assigned OMB Control Number 1018–0194 (expires August 31, 2026). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### **Proposed Authorization**

We propose to authorize the nonlethal, incidental take by Level A harassment and Level B harassment of 162 northern sea otters from the Southcentral Alaska stock. Authorized take may be caused by pile driving and marine construction activities conducted by TMC in Whittier, Alaska, between July 19, 2024, and July 18, 2025. We do not anticipate or authorize any lethal take to sea otters resulting from these activities.

##### *A. General Conditions for This IHA*

(1) Activities must be conducted in the manner described in the March 18, 2024, revised request from TMC for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of sea otters whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

(2) If project activities cause unauthorized take (*i.e.*, greater than 162 takes of the Southcentral Alaska stock of northern sea otters, a form of take other than Level A harassment or Level B harassment, or take of one or more sea otters through methods not described in the IHA), TMC must take the following actions:

(i) Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);

(ii) Report the details of the incident to the FWS within 48 hours; and

(iii) Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

(3) All operations managers, vehicle operators, and machine operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

(4) This IHA will apply to activities associated with the specified project as described in this document and in TMC's revised request. Changes to the specified project without prior authorization may invalidate the IHA.

(5) TMC's revised request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The request includes:

(i) TMC's original request for an IHA, dated March 1, 2024;

(ii) A revised application, dated March 18, 2024; and

(iii) Marine Mammal Mitigation and Monitoring Plan.

(6) Operators will allow the FWS personnel or the FWS's designated representative to visit project worksites to monitor for 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. "Operators" are all personnel operating under TMC's authority, including all contractors and subcontractors.

##### *B. Avoidance and Minimization*

(7) 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.

(8) During all pile-installation activities, regardless of predicted sound levels, a physical interaction shutdown zone of 10 m (33 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.

(9) 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.

(10) 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.

##### *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:

(11) Vessels must remain at least 500 m (0.3 mi) 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.

(12) 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.

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

(14) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include all measures identified in this section.

##### *D. Monitoring*

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

(16) Duties of the 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.

(17) 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.

(18) 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 FWS to review.

(19) Observers will be provided with reticuled binoculars (7×50 or better), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

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

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

(ii) 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.

(iii) 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).

(iv) 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.

(v) For all sea otters in or near a mitigation zone, observers will record the distance from the sound source 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.

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

(21) Monitoring of the shutdown zone must continue for 30 minutes following completion of pile installation.

#### *E. Measures To Reduce Impacts to Subsistence Users*

(22) Prior to conducting the work, TMC will take the following steps to reduce potential effects on subsistence harvest of sea otters:

(i) Avoid work in areas of known sea otter subsistence harvest;

(ii) Discuss the planned activities with subsistence stakeholders including Southcentral Alaska villages and traditional councils;

(iii) Identify and work to resolve concerns of stakeholders regarding the project's effects on subsistence hunting of sea otters; and

(iv) If any concerns remain, develop a POC in consultation with the FWS and subsistence stakeholders to address these concerns.

#### *F. Reporting Requirements*

(23) The applicant, TMC, must notify the FWS at least 48 hours prior to commencement of activities.

(24) Monthly reports will be submitted to the FWS's Marine Mammal Management office (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 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.

(25) A final report will be submitted to the FWS's MMM within 90 days after completion of work or expiration of the IHA. The report will include:

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

(ii) 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.

(iii) 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 corresponding to Level A harassment or Level B harassment (based on visual observation).

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

(v) 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 FWS in the form of electronic database or spreadsheet files.

(26) 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 FWS within 24 hours of the discovery to either the FWS's MMM Office (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 FWS.

(27) All reports shall be submitted by email to [FW7\\_mmm\\_reports@fws.gov](mailto:FW7_mmm_reports@fws.gov).

(28) TMC must notify the FWS upon project completion or end of the work season.

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

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or related documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify the document(s) to which your comments pertain, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, 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 FWS will consider all comments that are received before the close of the comment period (see **DATES**). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

**Peter Fasbender,**

*Assistant Regional Director for Fisheries and Ecological Services, Alaska Region.*

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