

North Carolina Wilmington, Department of Biology and Marine Biology, 601 S. College Road, Wilmington, North Carolina 284003, has applied in due form for a permit to collect, import, and export marine mammal parts for scientific research.

DATES: Written comments must be received on or before October 10, 2024.

ADDRESSES: The application and related documents are available for review by selecting “Records Open for Public Comment” from the “Features” box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 28223 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 28223 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Shasta McClenahan, Ph.D., (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to collect, import, and export mummified remains of seals from the Ross Sea, Antarctica to study virology and evolutionary biology. These parts are estimated to be hundreds to thousands of years old and from the following species: crabeater (*Lobodon carcinophagus*), Weddell (*Leptonychotes weddellii*), leopard (*Hydrurga leptonyx*), and southern elephant (*Mirounga leonine*) seals. Parts from up to 10 individuals from each species will be collected, imported, and exported for analysis annually. The permit would be valid for 3 years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the

application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 5, 2024.

Julia M. Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE196]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferndale Pier Maintenance Activities in Ferndale, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Petrogas Pacific, LLC (Petrogas) to incidentally harass marine mammals during construction activities associated with Ferndale Pier Maintenance Activities in Ferndale, Washington.

DATES: The authorization is effective from August 1, 2025 to July 31, 2026.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-petrogas-pacific-llcs-ferndale-pier-maintenance-activities>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The 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 proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On January 3, 2024 we received a request from Petrogas for an IHA to take marine mammals incidental to Ferndale Pier Maintenance Activities in Ferndale, Washington. Following NMFS’ review of the application, Petrogas submitted a revised version on March 26, 2024. The application was deemed adequate and complete on April 25, 2024. The notice of proposed IHA published for public comment on June 4, 2024 (89 FR 47903). Petrogas requested authorization of take of harbor seal, California sea lion, Steller sea lion and harbor porpoise by Level B harassment and, for harbor seal and harbor porpoise only, take by Level A harassment. Neither Petrogas nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

Petrogas is planning to remove the existing timber Pier that has served as a loading facility since 1965 and replace it with a new structure that meets current industry best practices. The activity includes vibratory removal of existing timber piles and installation of steel piles by both vibratory and impact driving. Due to in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, all planned in-water construction in this area is limited to a work window

beginning August 1 and ending February 1. However, since the Strait of Georgia is a very large water body with a long fetch, calm in-water work conditions are typically only available from August to the end of October. In-water construction will occur for 17 days intermittently between August 1, 2025 and October 31, 2026. Take of marine mammals is anticipated to occur due to vibratory pile removal as well as impact and vibratory pile installation.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (89 FR 47903, June 4, 2024). A detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS’ proposal to issue an IHA to Petrogas was published in the **Federal Register** on June 4, 2024 (89 FR 47903). That notice described, in detail, Petrogas’ activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day public comment period, NMFS did not receive any public comments.

Changes From the Proposed IHA to Final IHA

The notice of proposed IHA (89 FR 47903, June 4, 2024) indicated that the

IHA would be effective from August 1, 2024 to July 31, 2025. Petrogas has decided to delay the start of the project by 1 year. The new effective dates are from August 1, 2025 to July 31, 2026.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS’ Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS’ website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which exposure is expected for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS’ SARs). While no serious injury or

mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS’ stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS’ Alaska and Pacific SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). All species that could potentially occur in the planned project area are included in table 2 of the IHA application. While the gray whale, minke whale, Dall’s porpoise, and the Eastern North Pacific Northern Resident stock of killer whale have been reported in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided in the **Federal Register** notice for the proposed IHA (89 FR 47903, June 4, 2024).

TABLE 1—SPECIES FOR WHICH TAKE COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Balaenopteridae (rorquals)</i>						
Humpback Whale ..	<i>Megaptera novaeangliae</i> .	Central America/Southern Mexico—CA/OR/WA.	E, D, Y	1,494 (0.171, 1,284, 2021).	3.5	14.9
Humpback Whale ..	<i>Megaptera novaeangliae</i> .	Mainland Mexico—CA/OR/WA.	T, D, Y	3,477 (0.101, 3,185, 2018).	43	22
Humpback Whale ..	<i>Megaptera novaeangliae</i> .	Hawaii	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae</i>						
Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Southern Resident.	E, D, Y	73 (N/A, 73, 2022)	0.13	0
Killer Whale	<i>Orcinus orca</i>	West Coast Transient ...	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
<i>Family Phocoenidae (porpoises)</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters.	-, -, N	11,233 (0.37, 8,308, 2015).	66	≥7.2

TABLE 1—SPECIES FOR WHICH TAKE COULD OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions)</i> California Sea Lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	<i>Eumetopias jubatus</i>	Eastern	-, -, N	36,308 (N/A, 36,308, 2022).	2,178	93.2
<i>Family Phocidae (earless seals)</i> Harbor Seal	<i>Phoca vitulina</i>	Washington Northern Inland Waters.	-, -, N	16,451 (0.07, 15,462, 2019).	928	40

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>). ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

A detailed description of the species likely to be affected by Petrogas' construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 47903, June 4, 2024); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to the NMFS website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges

(behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS [NMFS, 2018]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range

(Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Petrogas' activities have the potential to result in harassment of marine mammals in the vicinity of the southeastern shores of the Strait of Georgia, in Puget Sound, Washington.

The notice of proposed IHA (89 FR 47903, June 4, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from vibratory pile driving on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 47903, June 4, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which informed NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (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 (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic stressors (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species (harbor porpoise) and phocids (harbor seal). Auditory injury is unlikely to occur for other species. The required mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers were estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed

or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment). Acoustic thresholds used in this analysis were discussed in detail in the notice of proposed IHA (89 FR 47903, June 4, 2024) and not repeated here. Please see that notice for additional detail.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss (TL) coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, impact pile driving, vibratory pile driving and removal). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom

composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source ($20 * \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 * \log[\text{range}]$). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory and impact pile installation of 30-in steel piles and vibratory removal of 16-in timber piles. Source levels for the various pile sizes and driving methods are presented in table 3. Bubble curtains will be employed during all impact driving, with an assumed 5 dB effective attenuation (Caltrans 2020).

TABLE 3—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Equipment used	Noise level ¹			Distance from measurement (m)
	dB peak	dB rms	dB SEL	
Impact pile driving 30-inch steel piles ²	210	190	177	10
Vibratory pile driving 30-inch steel piles ³	196	159	.....	10
Vibratory pile driver pulling 16-inch timber piles ³ .....	.....	162	.....	10

¹ SL values shown do not include -5 dB attenuation for bubble curtain usage. The -5 dB correction for attenuation was applied to determine harassment isopleths (Table 5).

² Caltrans 2015.

³ Caltrans 2020.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions

included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile

driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used for impact driving in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below in table 4 and table 5 below.

TABLE 4—USER SPREADSHEET INPUTS FOR LEVEL A HARASSMENT ISOPLETHS

Inputs	30-in steel impact installation	30-in steel vibratory installation	16-in timber vibratory removal
Spreadsheet Tab Used	(E.1) Impact Pile Driving (STATIONARY SOURCE: Impulsive, Intermittent).	(A.1) Vibratory Pile Driving (STATIONARY: Non-impulsive, Continuous)	
Source Level (Single Strike/shot SEL)	177.		
Peak	210.		
RMS	190	159	162
Weighting Factor Adjustment (kHz)	2	2.5	2.5
Strikes per pile	2000.		
Piles Per day	1.5	1.5	20
Propagation (xLogR)	15	15	15
Duration .....	.....	20	2
Distance of source level measurement (meters)	10	10	10

TABLE 5—CALCULATED LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (M) AND ENSONIFIED AREAS [km² in Parentheses]

Pile size/type	Level A pinnipeds		Level A cetaceans			Level B
	Harbor seal	Sea lions	LF	MF	HF	
30-in steel	Impact Installation					160 dB threshold
	205.4 (0.139)	15 (0.001)	383.2 (0.463)	13.7 (0.001)	457.2 (0.665)	464.2 (0.679)
	Vibratory Installation/Removal *					120 dB threshold
16-in Timber Piles	3.7	0.3	6.1	0.5	9.0	6,309.6 (62.5)
30-in steel	1.9	0.1	3.2	0.3	4.7	3,981 (24.9)

* The Level A harassment isopleths associated with vibratory installation/removal are all below the minimum shutdown zone and result in very small ensonified areas. Therefore they are not provided in this table but will be included in the following calculated take tables.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. The primary source for density estimates is from the Navy Marine Species Density Database (NMSDD) Phase III for the Northwest

Training and Testing Study Area (Navy, 2019). Therefore, a lower value was used for harbor porpoise density. These density estimates are shown in table 6 and will be used to calculate take due to the lack of site-specific data that is available.

To quantitatively assess potential exposure of marine mammals to noise levels from pile driving over the NMFS

threshold guidance, the following equation was first used to provide an estimate of potential exposures within estimated harassment zones:

$$\text{Exposure estimate} = N \times \text{Level B harassment zone (km}^2\text{)} \times \text{maximum days of pile driving}$$

where
N = density estimate (animals per km²) used for each species.

TABLE 6—MARINE MAMMAL SPECIES DENSITIES USED FOR EXPOSURE CALCULATIONS

Species	Region characterized	Density (animals/km ²)
Humpback Whale	North Puget Sound/San Juan Islands (Fall and Winter)	0.0027
Killer Whale (Southern Resident)	North Puget Sound/San Juan Islands (Fall and Winter)	0.0078
Killer Whale (Transient)	North Puget Sound/San Juan Islands (Fall and Winter)	0.0031
Harbor Porpoise	North Puget Sound	2.16
Steller Sea Lion	North Puget Sound/San Juan Islands (Fall)	0.0027
California Sea Lion	North Puget Sound/San Juan Islands (Fall)	0.0179
Harbor Seal	North Puget Sound/San Juan Islands (Fall)	0.76

Source: Navy 2019.

Table 7 below shows the total calculated take by Level A and Level B harassment over the 17 in-water work

days for the Petrogas activity resulting in total calculated take.

TABLE 7—CALCULATED TAKE BY LEVEL A AND LEVEL B HARASSMENT

Total days	7 days	7 days	10 days	Totals	Requested level A take
	30-in steel impact driving	30-in steel vibratory driving	16-in timber vibratory removal		
	Level A	Level A	Level A	Totals	Total
Humpback Whale	0.009	0.000	0.000	0.009	0
Southern Resident Killer Whales	0.000	0.000	0.000	0.000	0
Transient Killer whales	0.000	0.000	0.000	0.000	0
Harbor Porpoise	10.1	0.005	0.007	10.063	10
Steller Sea Lion	0.000	0.000	0.000	0.000	0
Cali Sea Lion	0.000	0.000	0.000	0.000	0
Harbor Seal	0.737	0.002	0.002	0.741	1
Level B Calculated Take				Total Level B Calculated Take	Requested Level B Take
	Level B	Level B	Level B	Totals	
Humpback Whale	0.013	0.471	1.689	2.172	0
Southern Resident Killer Whale	0.037	1.359	4.878	6.275	0
Transient Killer Whale	0.015	0.533	1.914	2.462	0
Harbor Porpoise	10.271	376.405	1,350.927	1,738	1,738
Steller Sea Lion	0.013	0.471	1.689	2.172	17
California Sea Lion	0.085	3.119	11.195	14.400	51
Harbor Seal	3.614	132.439	475.326	611.379	611

Humpback Whale

Humpback whales are an uncommon occurrence near the project area but they do have the potential to be in the area as they migrate to feeding grounds to the north and mating grounds far south. Based on best available density estimates Petrogas has calculated the

potential take of two humpback whales by Level B harassment. However, they will shut down whenever humpback whales approach the Level B harassment zone. Given the low density of humpback whales in the project area, the ability to detect the whales visually from a considerable distance, the capacity to track whales through the

Orca Network, and the anticipated efficacy of required mitigation and monitoring measures, Petrogas did not request take. NMFS concurs with this assessment and, therefore, has not authorized take of humpback whales.

Killer Whales

Both Southern resident killer whales (SRKW) and transient killer whales could occur near the project area. Take calculations indicate that up to six SRKW and two transient whales could be taken by Level B harassment. Even though the project site is located in summer core area critical habitat, the southeastern corner of the Strait of Georgia is not a location where SRKW are commonly located. After reviewing the monthly reports of September through October from 2016–2023, the occurrence of killer whales from any stock was uncommon in the southeastern corner of the Strait of Georgia. Furthermore SRKW were far less prevalent when compared to transients (ORCA 2024). Given the expansive range of SRKW; the relatively small area of their habitat that may be affected by the planned project; the ready availability of habitat of similar or higher value, and short-term nature of construction (17 days), NMFS concluded that take of SRKW would be unlikely. Additionally, Petrogas will shut down whenever a killer whale from any stock is observed approaching a harassment zone so take of transients is also not likely. Given the ability to visually detect killer whales from planned protected species observer (PSO) locations (including boats), the capacity to track SRKW through contact with the ORCA Network, and the expected efficacy of required mitigation and monitoring measures, Petrogas did not request take. NMFS concurs and has not authorized take of killer whales.

Harbor Porpoise

Harbor porpoises are commonly found in the Strait of Georgia as indicated by regular sightings from the British Columbia Cetacean Sightings Network and the Orca Network (Zier, 2015). Use of NMSDD data yielded an estimated 10 takes by Level A harassment and 1,738 by Level B harassment. NMFS concurs. Note that Petrogas has committed to extending the shutdown zone beyond the Level A harassment zone in order to minimize potential PTS, but also requested limited take by Level A harassment in case some animals enter into the injury zone unseen by PSOs and remain for sufficient time to incur PTS. NMFS has authorized 10 takes by Level A harassment and 1,738 takes by Level B harassment.

Steller Sea Lion

Calculated take based upon the species density in the Strait of Georgia yielded two potential takes by Level B harassment during the 17 days of in-water pile driving work. While there are no known nearby haulouts, there are haulouts in the greater Strait of Georgia. Petrogas felt that the calculated value was too low since this species is known to travel significant distances in search for prey, possibly into the marine waters of the Cherry Point Aquatic Reserve.

NMFS reviewed other IHA monitoring reports from Puget Sound and found that the Seattle Pier 63 construction project (87 FR 31985, May 26, 2022) reported a maximum of one animal taken per day over 17 in-water work days between October 12 and November 30, 2022. Therefore, NMFS has authorized 17 (1/day) takes of Steller sea lion by Level B harassment.

California Sea Lion

Calculated take based upon the species density in the Strait of Georgia found 14 potential takes by Level B harassment during the 17 days of pile driving work at the Petrogas pier. While there are no known nearby haulouts, there are haulouts in the greater Strait of Georgia, and because this species may travel significantly in search for prey, possibly into the marine waters of the Cherry Point Aquatic Reserve. Petrogas felt this estimate was also low. Results from the Seattle Pier 63 project showed a maximum of three California sea lions taken per day over 17 in-water work days between October 12 and November 30, 2022. Assuming the same maximum number of takes (3) over 17 planned days of in-water work, NMFS has authorized 51 takes by Level B harassment.

Harbor Seal

Harbor seals are common in the Strait of Georgia. Use of NMSDD (Navy 2019) found that there would be a single take by Level A harassment. Note that Petrogas committed to extending the shutdown zone beyond the Level A harassment zone in order to minimize potential PTS to harbor seals, but also requested a single take by Level A harassment in case some animals enter into the injury zone unseen by PSOs and remain for sufficient duration to incur PTS. The density data utilized also resulted in 611 calculated takes by Level B harassment. Therefore, NMFS is authorizing a single take of harbor seal by Level A harassment and 611 takes by Level B harassment.

Authorized takes by Level A and Level B harassment are shown in table 8.

TABLE 8—AUTHORIZED TAKE OF MARINE MAMMALS BY LEVEL A AND LEVEL B HARASSMENT BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Stock	Stock abundance	Level A	Level B	Total authorized take	Authorized take as percentage of stock
Harbor porpoise	Washington Inland Waters	11,233	10	1,738	1,748	15.56.4
Steller sea lion	Eastern U.S	36,308	.....	17	17	0.05
California sea lion	U.S	257,606	.....	51	51	0.02
Harbor seal	Washington Northern Inland	16,451	1	611	612	3.7

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and 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 certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of

conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as

well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations.

Pre-start Clearance 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 must observe the shutdown and monitoring

zones for a period of 30 minutes. The shutdown zone will 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 (discussed below) cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 9 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Implementation of Shutdown Zones—For all pile driving/removal activities,

Petrogas must implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns will be used to avoid or minimize takes by Level A harassment from impact pile driving for all four species for which take may occur. Shutdown zones will be based upon the Level A harassment isopleth for each pile size/type and driving method where applicable. This is anticipated to reduce Level A harassment exposures without resulting in a substantial risk to the project schedule that could occur if marine mammals repeatedly enter into larger shutdown zones.

A minimum shutdown zone of 10 m will be implemented for all in-water construction activities to avoid physical interaction with marine mammals. Authorized shutdown and monitoring zones for each activity type are shown in table 9.

TABLE 9—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL (m)

Pile size/type	Shutdown zone			Level B harassment monitoring zone
	HF	Phocid	Otariid	
16-in timber Vibratory	10	10	10	6,310
30-in steel Vibratory	10	10	10	3,990
30-in steel Impact	460	210	20	465

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and PSOs will document the animal’s presence within the estimated harassment zone.

If a species for which authorization has not been granted, or a species which has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving activities will be shut down immediately. Activities will not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

Coordination with Local Marine Mammal Research Network—Prior to the start of pile driving for the day the PSOs will contact the Orca Network to find out the location of the nearest sightings of SRKW and humpback whale. Petrogas must delay or halt pile driving activities if a SRKW, unidentified killer whale (*i.e.* transient)

or humpback whales are sighted within the vicinity of the project area and are approaching the Level B harassment zones (table 9) during in-water activities. Finally, if a SRKW, unidentified killer whale, or humpback whale enters the Level B harassment zone undetected, in-water pile driving must be suspended immediately upon detection and must not resume until the animal exits the Level B harassment zone or 15 minutes have passed without re-detection of the animal.

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 hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft start will 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. Soft start is not required during vibratory pile driving and removal activities.

Bubble Curtain—A bubble curtain must be employed during impact installation or proofing of steel piles. A noise attenuation device will not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure will be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring will ensure 100 percent mudline contact. No parts of the ring or other objects will prevent full mudline contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of the applicant's measures, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring must be conducted by NMFS-approved observers in accordance with section 13 of the application. Trained observers will be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal 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 equipment is no more than 30 minutes.

A minimum of three PSOs must be on duty during all in-water pile driving activities. Two shore-based observers will be stationed at locations offering best line of sight views to monitor the entirety of the shutdown zones and provide the most complete coverage of the monitoring zones. The first observer may be on the alumina silos to the east, roughly 100 feet (ft) (30.5 meters (m)) above the water to scan the wider area. The second observer may be on the alumina unloader at the north end of the Pier. This would place the observer roughly 50 ft (15.25 m) above water, approximately 300 ft (91.5 m) south of the pile driving activities. Additionally, Petrogas will deploy one boat-based PSO that will be positioned at a location or moving in a pattern that offers the most complete visual coverage of the monitoring zone. Note, however, PSO position(s) may vary based on construction activity and location of piles or equipment.

The U.S. Fish and Wildlife Service, (USFWS) under ESA section 7, is requiring Petrogas to utilize observers to monitor for the endangered marbled murrelet (*Brachyramphus marmoratus*). As long as an observer meets the NMFS PSO qualifications as described below and has been approved by NMFS, they may also serve as a USFWS-certified observer for marbled murrelets. NMFS must be notified if any NMFS-approved PSO is serving in this dual-purpose role.

PSOs will scan the waters using binoculars and would use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs must be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who must be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. Petrogas will adhere to the following observer qualifications:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Additional standard observer qualifications include:

- 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 and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; 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.

Reporting

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact driving) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving).
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

- Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults,

juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; and Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).

- Number of marine mammals detected within the harassment zones, by species.
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

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

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Petrogas must immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Region regional stranding coordinator. The report must include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Petrogas to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Petrogas will not be able to resume their activities until notified by NMFS.

In the event that Petrogas discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of

decomposition as described in the next paragraph), Petrogas must immediately report the incident to the Office of Protected Resources (PR.ITP.MonitoringReports@noaa.gov), NMFS and to the West Coast Region regional stranding coordinator as soon as feasible. The report must include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with Petrogas to determine whether modifications in the activities are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 8, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities,

impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensounded above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment would be due to potential behavioral disturbance, temporary threshold shift (TTS) and PTS. No serious injury or mortality is anticipated or authorized given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated for harbor porpoise and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.*, Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. The impact of Level B harassment takes on the affected individuals would be minimized through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. Vibratory driving associated with the planned project may produce sound at distances of up to six kilometers from the project site, thus

overlapping with some likely less-disturbed habitat (such as the Cherry Point Aquatic Reserve). The project site itself is frequented by large tankers every few days but the majority of sound fields produced by the specified activities are relatively close to the Pier. Animals disturbed by project sound would be expected to avoid the area and use nearby higher-quality habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor porpoises and harbor seals may sustain some limited Level A harassment in the form of auditory injury of low severity. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. Harbor porpoises are high-frequency cetaceans while the hearing ability of harbor seal below 2 kHz is also poor (NMFS, 2018).

If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the intermittent driving schedule (17 in-water work days between August 1 and October 31, 2024); short duration of the activities (no more than 3 hours per day combined impact and vibratory driving); the relatively small area of the habitat that may be affected; and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

While there are haulouts for pinnipeds in the area, these locations are some distance from the actual project site. There are two documented California sea lion haulouts in the southern Strait of Georgia, both on the western coast of the Strait in British Columbia. The closest haulout in near Tumbo Island on the eastern edge of the Gulf Island, over 15 miles (24.12 kilometers (km)) from the project site. The closest documented Steller sea lion haulout location is over 10 miles (16.1 km) from the project site, on Sucia Island (Jeffries *et al.*, 2000). The closest documented harbor seal haulouts are two different low population (100 individuals) locations approximately 5 miles (3.1 km) from the project site, one to the north and one to the south (Jeffries *et al.*, 2000). To the southwest and west of the project location are 14 other haulouts dotted throughout a few of the small northern San Juan Islands (North of Orcas Island) within 10 miles (16.1 km) of the project (Jeffries *et al.*, 2000).

While repeated exposures of individuals to this pile driving activity could cause limited Level A harassment in harbor seals and harbor porpoises and Level B harassment in these two species in addition to sea lions, they are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment exposures (*i.e.*, to harbor porpoise and harbor seals, only) are anticipated to result in slight PTS (*i.e.*, of a few decibels), within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The ensounded areas from the project is very small relative to the overall habitat ranges of all species and stocks;
- Repeated exposures of pinnipeds to this pile driving activity could cause slight Level A harassment in seals and harbor porpoise and Level B harassment in seals, harbor porpoise and sea lion species, but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness,

reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stocks as a whole; and

- The mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 8 demonstrates the number of instances in which individuals of a given species could be exposed to received noise levels that could cause take of marine mammals. Our analysis shows that less than 6 percent of all species could be taken by harassment which is below one third of the population for all.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that

the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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 action (*i.e.*, the issuance of an IHA) 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 NAO 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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

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. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to Petrogas for the potential harassment of small numbers of four marine mammal species incidental to Ferndale Pier Maintenance Activities in Ferndale, Washington.

Dated: September 5, 2024.

Catherine Marzin,

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

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BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2022–0020]

Electronic Filing of Certificate of Compliance Data: Announcement of Expansion of Partner Government Agency Message Set Test and Collection of Information Burden Estimate

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In a June 4, 2024, **Federal Register** notice, the U.S. Consumer Product Safety Commission (CPSC), in consultation with U.S. Customs and Border Protection (CBP), announced their joint intent to expand the current Partner Government Agency (PGA) Message Set test (Beta Pilot test) to include up to 2,000 additional participants. The expansion will allow importers of regulated consumer products to voluntarily participate in the test by electronically submitting (eFiling) data from a certificate of compliance. Beta Pilot test participants will eFile certificate data to the CBP-authorized Electronic Data Interchange (EDI) system known as the Automated Commercial Environment (ACE). In this notice, CPSC addresses two comments supporting the expanded Beta Pilot test; CPSC did not revise its burden estimates based on the comments. By publication of this notice, the Commission announces that CPSC has submitted to the OMB a request for approval of the collection of information, as proposed.

DATES:

Beta Pilot Test: Submit electronic requests to participate in the expanded Beta Pilot test at any time after publication of this notice. CPSC will allow participation until we reach 2,000 volunteers or until an eFiling requirement becomes permanent, whichever comes first. CPSC asks that each Beta Pilot test participant electronically file CPSC PGA Message Set certificate data during the expanded Beta Pilot test.

Paperwork Reduction Act: Submit comments on the proposed expanded collection of information by October 10, 2024 using the methods described below in the **ADDRESSES** section of this preamble.

ADDRESSES:

Beta Pilot Test: Submit requests to participate in the Beta Pilot test and any technical comments on CPSC's supplemental Customs and Trade Automated Interface Requirements (CATAIR) guideline (available on