



INCIDENTAL HARASSMENT AUTHORIZATION

The U.S. Army Corps of Engineers (USACE) and its designees are hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to incidentally harass marine mammals, under the following conditions:

1. This incidental harassment authorization (IHA) is valid from May 1, 2024 through April 30, 2025.
2. This IHA authorizes take incidental to vibratory and impact pile driving and removal activities, as specified in the USACE's February 2023 IHA application, associated with the Port of Nome Modification Project in Nome, Alaska. Hereafter (unless otherwise specified) the term "pile driving" is used to refer to both pile installation and pile removal.
3. General Conditions
 - (a) A copy of this IHA must be in the possession of the Holder of the Authorization (Holder), supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this IHA at all times that activities subject to this IHA are being conducted.
 - (b) The species and/or stocks authorized for taking are listed in Table 1. Authorized take, by Level B harassment only, is limited to the species and numbers listed in Table 1.
 - (c) The taking by Level A harassment, serious injury or death of any of the species listed in Table 1 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of this IHA.
 - (d) The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant USACE staff are trained prior to the start of activities subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures, including those related to engaging with subsistence communities and avoiding impacts to subsistence hunting, are clearly understood. New personnel joining during the project must be trained prior to commencing work.



- (e) The Holder also must abide by the reasonable and prudent measures and terms and conditions of the July 27, 2023 Biological Opinion and Incidental Take Statement (attached) issued by NMFS pursuant to section 7 of the Endangered Species Act.

4. Mitigation Requirements

- (a) The Holder must employ PSOs and establish monitoring locations as described in section 5 of this IHA and the Marine Mammal Monitoring Plan (Monitoring Plan; attached). The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.
- (b) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (i.e., pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity.
- (c) 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 2 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.
- (d) If a marine mammal is observed entering or within the shutdown zones indicated in Table 2, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in condition 4(e) of this IHA.
- (e) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 2 for 15 minutes (for pinnipeds) or 30 minutes (for cetaceans) have passed without re-detection of the animal.
- (f) The Holder must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.
- (g) Pile driving activity must be halted (as described in condition 4(d) of this IHA) upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone (as shown in Table 2).

- (h) The Holder, construction supervisors and crews, PSOs, and relevant USACE staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- (i) USACE must coordinate with local subsistence communities, notify the communities of any changes in the operation, and take action to avoid or mitigate impacts to subsistence harvests.
- (j) USACE must meet with local subsistence communities at least once prior to the start of the construction season and provide weekly updates, including contact information for USACE project personnel, during the construction season. USACE must update and redistribute the POC as additional meetings are planned, and executed and to ensure that all concerns from the meetings are summarized in the POC. The POC must clearly describe how all concerns related to subsistence hunting of marine mammals have been addressed. Distribution of the POC must include all Tribes within the Nome region as indicated in Kawerak, Inc.'s point of contact list.
- (k) USACE must indicate in the educational materials that it develops for the Port of Nome construction workforce that Alaska Natives have the right to customary and traditional harvest of marine mammals in marine waters, including in and around the Port area when subsistence opportunities present themselves.
- (l) USACE must implement the following measures during vessel transit:
 - (i) Vessels must remain at least 460 m (500 yds) from North Pacific right whales and avoid transiting through designated North Pacific right whale critical habitat if practicable (50 CFR 226.215). If traveling through North Pacific right whale critical habitat cannot be avoided, vessels must travel through North Pacific right whale critical habitat at 5 kn or less or at 10 kn or less while PSOs maintain a constant watch for marine mammals from the bridge. Vessel personnel must maintain a log indicating the time and geographic coordinates at which vessels enter and exit North Pacific right whale critical habitat.
 - (ii) Vessels must not approach within 5.5 km (3 nm) of Steller sea lion rookery sites listed in (50 CFR § 224.103(d)).
 - (iii) Vessels must not approach within 914 m (3,000 ft) of any Steller sea lion haulout or rookery.

- (iv) Project vessels operating in Cook Inlet must maintain a distance of at least 1.5 miles south of the mean lower low water line between the Little Susitna River and Beluga River.
- (v) USACE must time Port of Alaska departures or recalls aligned with the tide periods to avoid navigating at through-water speeds exceeding 4 knots, as practicable and as safety allows.

5. Monitoring Requirements

- (a) Marine mammal monitoring must be conducted in accordance with the conditions in this section and the Monitoring Plan (attached) and this IHA.
- (b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:
 - (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 at least one year of prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. This PSO must be designated the as the lead PSO and must be stationed at the construction site.
 - (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. PSOs may also substitute Alaska native traditional knowledge for experience.
 - (iv) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.
- (c) The Holder must establish monitoring locations *as described in the Monitoring Plan (attached)*. During all in-water activities, one PSO must be on duty at or near the construction site to monitor the shutdown zones. During activities where the Level B harassment zones extend beyond 1,000 m, a second PSO must be stationed approximately 3.5 km to the east of the construction site.
- (d) One PSO must monitor for 8 hours per day for 1 week before and 1 week after pile driving activities (weather and ice permitting).
- (e) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in section 6 of this IHA.

- (f) USACE must employ a sufficient number of PSOs to allow them to rotate every 4 hours and not work more than 12 hours within a 24-hour period.
- (g) The Holder must conduct a statistical power analysis to estimate the minimum number of sightings or sample size required for pre- and post-monitoring periods in order to detect an effect in marine mammal presence due to the construction disturbance (i.e., whether the pre- and post-monitoring periods were of a sufficient length).
- (h) If, and when, the Holder drives fender piles, the Holder must conduct a minimum of one aerial overflight to assist in estimating species presence in the far field during fender pile installation. The Holder will conduct two aerial overflights if it determines that it is practicable to do so.
- (i) Passive acoustic monitoring (PAM), to be conducted for purposes of recording marine mammal vocalizations and sheet pile sound field verification, must be conducted in accordance with a NMFS-approved Acoustic Monitoring Plan to be submitted no less than 30 days prior to commencement of pile driving activity.

6. Reporting

- (a) The Holder must submit its draft annual reports on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.
- (b) The Holder must submit monthly reports on all monitoring conducted under this IHA by the 15th day of the month following the reporting period. Monthly reports must include all elements listed in 6(d), with the exception of 6(d)(viii).
- (c) All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *itp.davis@noaa.gov*.
- (d) The annual marine mammal report must contain the informational elements described in the Monitoring Plan and, at minimum, must include:
 - (i) Dates and times (begin and end) of all marine mammal monitoring;
 - (ii) Construction activities occurring during each daily observation period, including:

- A. The number and type of piles that were driven and the method (e.g., impact, vibratory, down-the-hole); and
 - B. Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving).
- (iii) PSO locations during marine mammal monitoring;
- (iv) 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;
- (v) Upon observation of a marine mammal, the following information:
- A. Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
 - B. Time of sighting;
 - C. 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;
 - D. Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
 - E. Estimated number of animals (min/max/best estimate);
 - F. Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
 - G. Animal's closest point of approach and estimated time spent within the harassment zone;
 - H. 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);
- (vi) Number of marine mammals detected within the harassment zones, by species, including a comparison between visual detections in the near-field and acoustic detections in the far-field; and

- (vii) Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.
 - (viii) Results of the statistical power analysis described in condition 5(g), including whether an alternative pre- and post- activity monitoring approach would be appropriate for future project years.
 - (ix) Recommendations for improvements to monitoring activities in future years based on lessons learned during monitoring.
- (e) The Holder must submit all PSO datasheets and/or raw sighting data with the draft report. PSO data must be submitted electronically in a format that can be queried such as a spreadsheet or database.
- (f) The acoustic monitoring report, at minimum, must include:
- (i) Hydrophone equipment and methods: recording devices, sampling rate, sensitivity of the PAM equipment, locations of the hydrophones, duty cycle, distance (m) from the pile where recordings were made, depth of recording devices, depth of water in area of recording devices.
 - (ii) Type and size of pile being driven, substrate type, method of driving during recordings.
 - (iii) Mean, median, and maximum received sound levels: root mean square sound pressure level (SPL_{rms}) in 1-sec segments, peak sound pressure level (SPL_{peak}), cumulative sound exposure level (SEL_{cum}), duration to install each pile.
 - (iv) Duration per pile measured, one-third octave band spectrum, power spectral density plot.
 - (v) Estimated source levels referenced to 10 m, transmission loss coefficients, and estimated Level A and Level B harassment isopleths.
 - (vi) Number of acoustic detections, by species and operation mode (including no activity periods as the “undisturbed” condition).
- (g) Reporting injured or dead marine mammals:

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *itp.davis@noaa.gov*) and to the Alaska regional stranding network (877-925-7773) as soon as feasible. If the death or injury was clearly caused by the

specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS.

The report must include the following information:

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

7. This Authorization may be modified, suspended or revoked if the Holder fails to abide by the conditions prescribed herein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines: (1) the authorized taking is likely to have or is having more than a negligible impact on the species or stocks of affected marine mammals, (2) the authorized taking is likely to have or is having an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses, or (3) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat.

8. Renewals

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities (or a subset of those activities) are planned or (2) the specified activities will not be completed by the time the IHA expires and a Renewal would allow for completion of the activities, provided all of the following conditions are met:

- (a) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (note a Renewal IHA expiration date cannot extend beyond one year from expiration of this IHA).
- (b) The request for renewal must include the following:

- (i) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed for this IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- (ii) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
- (c) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings made in support of this IHA remain valid.

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

Table 1. Authorized Incidental Take.

Common Name	Scientific name	Stock	Level B harassment
Bearded Seal	<i>Erignathus barbatus</i>	Beringia	995
Ribbon Seal	<i>Histiophoca fasciata</i>	Unidentified	5
Ringed Seal	<i>Pusa hispida</i>	Arctic	51
Spotted Seal	<i>Phoca largha</i>	Bering	1,700
Steller sea lion	<i>Eumetopias jubatus</i>	Western	85
Beluga whale	<i>Delphinapterus leucas</i>	Eastern Bering Sea	1,275
Harbor Porpoise	<i>Phocoena phocoena</i>	Bering Sea	24
Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Alaska Resident	30
		Eastern North Pacific Gulf of Alaska, Aleutian Islands and Bering Sea Transient	
Minke Whale	<i>Balaenoptera acutorostrata</i>	Alaska	12
Gray Whale	<i>Eschrichtius robustus</i>	Eastern North Pacific	12
Bowhead Whale	<i>Balaena mysticetus</i>	Western Arctic	2

Table 2. Shutdown and Harassment Zones.

Pile size, type, and method	Minimum shutdown zone (m) ^{a, b}		Harassment Zone
	Cetaceans ^c	Pinnipeds	
Dredging	300 ^a		---
Vibratory			
Temporary template piles (Pipe piles ≤ 24")	10		1,848
(Alternate) Temporary template piles (H-piles 14")			1,000
Anchor piles (14" HP14x89 or similar)			1,000
Sheet piles (20" PS31 or similar)	30	20	5,168
Fender piles (Pipe piles 36")	70	30	21,544
Impact			
Temporary template piles (Pipe piles ≤ 24")	300	150	858
(Alternate) Temporary template piles (H-piles 14")			159
Anchor piles (14" HP14x89 or similar)			159
Sheet piles (20" PS31 or similar)			858
Fender piles (Pipe piles 36")	500	210	1,585

^a Or to the distance of an acoustic barrier (e.g., breakwater).

^b If USACE provides data early in the construction season, NMFS may adjust the shutdown zones and revise the Level A and Level B harassment zones, as appropriate, and pending review and approval of the results of SFV.

^c USACE must shut down if a PSO observes a bowhead whale within the Level B harassment zone.