

mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will 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 will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

#### Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (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 for authorization 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.

#### 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 final IHA qualifies to be categorically excluded from further NEPA review.

#### Authorization

NMFS has issued an IHA to the Port of Bellingham for the potential harassment of small numbers of three marine mammal species incidental to the maintenance and rehabilitation of the Bellingham Shipping Terminal project in Bellingham, WA, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: November 7, 2023.

**Shannon Bettridge,**

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

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[RTID 0648-XD502]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Coast Guard Construction in Astoria, Oregon

**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 the United States Coast Guard (USCG) to incidentally harass marine mammals during pile driving activities associated with East Tongue Point (ETP) construction project in Astoria, Oregon.

**DATES:** The Authorization is effective from November 6, 2023 through November 5, 2024.

**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-united-states-coast-guards-construction-astoria-oregon>. In case of problems accessing these documents, please call the contact listed above.

**FOR FURTHER INFORMATION CONTACT:** Jenna Harlacher, 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 mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

#### Summary of Request

On April 22, 2022, NMFS received a request from the USCG for an IHA to take marine mammals incidental to pile driving activity associated with the ETP construction in Astoria, Oregon. Following NMFS’ review of the application, we received a revised version of the application on June 27, 2022. After finalizing construction details, the USCG submitted another revised version on May 26, 2023, followed by a final revised version on July 24, 2023, which was deemed adequate and complete on August 1, 2023. The proposed IHA was published for public comment on September 27, 2023. USCG’s request is for take of harbor seal, California sea lion, Steller sea lion and harbor porpoise by Level B harassment and, for harbor seal and harbor porpoise, Level A harassment. Neither USCG nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is

appropriate. There are no changes from the proposed IHA to the final IHA.

### Description of Activity

#### Overview

The USCG requested an IHA to homeport multiple new Fast Response Cutters (FRC) to support USCG District 13 at ETP in Astoria, OR. This three-phased project entails both onshore and in-water construction activities to remove old piles, construct and improve facilities necessary for the long-term support of the FRC's and USCG mission. Phase 1 includes pile removal and demolition, dredging and shoreline rock improvements, phase 2 includes all pile driving and in water construction, and phase 3 includes all overwater and upland construction.

The purpose of the project is to improve and construct waterside and landslide facilities that will meet homeporting requirements of the FRCs. This includes the availability of logistics and support amenities for personnel, the ability of the new FRC docks/floats to accommodate the FRCs with all necessary operations on the boat while it is stationary at the dock, and the ability of the facility to provide for a long-term USCG presence for the economic life of its assets. Facilities at ETP are aged, outdated, and will require improvements to meet homeporting requirements.

Of the stages of this project, the only part that may result in Level A and Level B harassment, and further analyzed in this notice is the in-water construction activities associated with impact pile driving (Phase 2). The USCG proposes installation of 30-inch (in) and 36-in steel pipe piles for their new facilities with an estimated 52 total days of impact pile driving. Pile driving will only occur within the Oregon Department of Fish and Wildlife (ODFW) approved in-water working

window, however the proposed IHA will have a 1-year period of effectiveness

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 66393, September 27, 2023). Since that time, no changes have been made to the planned construction activities. Therefore, 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 USCG was published in the **Federal Register** on September 17, 2023 (88 FR 66393). That notice described, in detail, USCG's activities, the marine mammal species that may be affected by the activities, 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. This proposed notice was available for a 30-day public comment period. NMFS received no public comments.

### 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 take is expected and authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (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' U.S. Pacific and Alaska SARs. All values presented in table 1 are the most recent available at the time of publication and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
<b>Odontoceti (toothed whales, dolphins, and porpoises)</b>						
<i>Family Phocoenidae (porpoises):</i> Harbor Porpoise .....	<i>Phocoena phocoena</i> .....	Northern Oregon/Washington Coast.	-,N	21,487 (0.44, 15,123, 2011).	151	≥3.0
<b>Order Carnivora—Superfamily Pinnipedia</b>						
<i>Family Otariidae (eared seals and sea lions):</i> California Sea Lion .....	<i>Zalophus californianus</i> .....	US .....	-,N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion .....	<i>Eumetopias jubatus</i> .....	Eastern .....	-,N	43,201 (N/A, 43,201, 2017) .....	2,592	112

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
Family Phocidae (earless seals): Harbor Seal .....	<i>Phoca vitulina</i> .....	Oregon/Washington Coast .....	-,N	UNK .....	UND	10.6

<sup>1</sup> Endangered Species Act (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.

<sup>2</sup> NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports/>. CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance.

<sup>3</sup> 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, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all four species in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While killer whales (*Orcinus orca*), humpback whales (*Megaptera novaeangliae*), and gray whales (*Eschrichtius robustus*) have been sighted off the Oregon coast, the USCG's project is located 23 kilometers (km) into the mouth of the Columbia River. Therefore 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 here and in the USCG's application.

A detailed description of the species likely to be affected by the USCG's 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 (88 FR 66393, September 27, 2023). 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 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 and Holt, 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 USCG's construction activities have the

potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (88 FR 66393, September 27, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the USCG's pile

driving activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this notice and is not repeated here; please refer to the notice of the proposed IHA (88 FR 66393, September 27, 2023).

### Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of "small numbers," and the negligible impact determinations.

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 source (*i.e.*, impact 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. The 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 take numbers are 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 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).

**Level B Harassment**—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment

when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1  $\mu$ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1  $\mu$ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

USCG's planned activity includes the use of impulsive (impact pile driving) sources, and therefore the RMS SPL threshold of 160 dB re 1  $\mu$ Pa is applicable.

**Level A harassment**—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). USCG's planned activity includes the use of impulsive (impact pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans .....	Cell 1: $L_{pk,flat}$ : 219 dB; $L_{E,LF,24h}$ : 183 dB .....	Cell 2: $L_{E,LF,24h}$ : 199 dB.
Mid-Frequency (MF) Cetaceans .....	Cell 3: $L_{pk,flat}$ : 230 dB; $L_{E,MF,24h}$ : 185 dB .....	Cell 4: $L_{E,MF,24h}$ : 198 dB.
High-Frequency (HF) Cetaceans .....	Cell 5: $L_{pk,flat}$ : 202 dB; $L_{E,HF,24h}$ : 155 dB .....	Cell 6: $L_{E,HF,24h}$ : 173 dB.
Phocid Pinnipeds (PW) (Underwater) .....	Cell 7: $L_{pk,flat}$ : 218 dB; $L_{E,PW,24h}$ : 185 dB .....	Cell 8: $L_{E,PW,24h}$ : 201 dB.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater) .....	Cell 9: $L_{pk,flat}$ : 232 dB; $L_{E,OW,24h}$ : 203 dB .....	Cell 10: $L_{E,OW,24h}$ : 219 dB.

\* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure ( $L_{pk}$ ) has a reference value of 1  $\mu$ Pa, and cumulative sound exposure level ( $L_E$ ) has a reference value of 1  $\mu$ Pa<sup>2</sup>s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

#### Ensonified Area

Underwater sound propagation modeling was completed by USCG using dBSea, a software developed by Marshall Day Acoustics for the modeling of underwater sound propagation in a variety of environments. The model was built by importing bathymetry data and placing noise sources in the environment. Each source can consist of equipment chosen from either the standard or the user-defined databases. Noise mitigation methods may also be included. The user has control over the seabed and water properties including sound speed profile, temperature, salinity, and current. Noise levels were calculated to the extent of the bathymetry area. To examine results in more detail, levels may be plotted in cross sections, or a detailed spectrum may be extracted at any point in the calculation area. Levels were calculated in third octave bands from 12.5 (hertz) Hz to 20 kHz. Please

refer to Acoustic Assessment included in USCG’s application for additional details on the modeling principles and assumptions.

The representative acoustic modeling scenarios were derived from descriptions of the expected construction activities through consultations between the USCG project design and engineering teams. The scenarios modeled were ones where potential underwater noise impacts of marine species were anticipated and included impact pile driving associated with pier installation. All modeling scenarios occur at a representative location. This location was selected so that the effects of sound propagation at the range of water column depths occurring within the project area could be evaluated.

The USCG opted to perform their own acoustic modeling for the Level A and Level B harassment isopleths as they had site specific information to input

into the model, which may assist in providing more accurate results than, for example, use of NMFS’ User Spreadsheet tool, which is a relatively simple tool that cannot incorporate site-specific environmental information. The modeling used by USCG takes into account bathymetry, geo-acoustic properties of sub-bottom sediments, and sound speed profile. NMFS has reviewed USCG’s modeling and determined that it is acceptable for use here.

A summary of construction and operational scenarios included in the underwater acoustic modeling analysis is provided in the Acoustic Assessment and summarized in table 5 below. The pile diameters selected for the impact pile driving modeling scenarios were based on maximum project design considerations approximated by USCG. The Level A and Level B harassment isopleths for the planned activities are shown in table 4 and 5.

TABLE 4—SOURCE LEVELS FOR IMPACT PILE INSTALLATION

Pile size	Peak SPLs (dB)	RMS SPLs (dB)	SELss (dB)	Source
36-in pile .....	208	190	180	Caltrans 2020.
30-in pile .....	210	190	177	Caltrans 2020.

TABLE 5—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Activity	Level A harassment zones (m)			Level B harassment zone (m)
	HF cetaceans	Phocid pinnipeds	Otariid pinnipeds	
36-in pile .....	287	197	0	602
30-in pile .....	213	130	0	602

#### Marine Mammal Occurrence and Take Calculation and 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 and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur

and authorized. The USCG used marine mammal species densities from the Pacific Navy Marine Species Density Database to estimate take for marine mammals. This database incorporates

analyzed literature and research for marine mammal density estimates per season for regions throughout the U.S. and the USCG based their take estimates on regionally available population density estimates and site-specific knowledge. Although this database provides densities for all species present in the action area, the densities are based on offshore abundance and not directly relevant to occurrence within in the Columbia River. Following careful review of the analysis presented by the USCG in its application, including marine mammal occurrence data, NMFS

has determined that different information inputs than those selected by the USCG represent the best available scientific information for marine mammal abundance in the action area. These selections are discussed in greater detail below.

*Steller Sea Lion, California Sea Lion and Harbor Seal*

For Steller sea lions, California sea lions, and harbor seals, the numbers of individuals were referenced from Washington Department of Fish and Wildlife's (WDFW) surveys from 2000–

2014 at the South Jetty for the months of in water work (November through February) and averaged to get an estimated daily count (table 6). While animals were surveyed at the prominent haul out site along the South Jetty, since the ETP site is close to the mouth of the river and the South Jetty, we assumed each of these estimates represents a good proxy for the total number of individuals that could be present in the project vicinity. We derived potential take estimates from the average abundance recorded over the specified period.

TABLE 6—PINNIPED COUNTS FROM THE SOUTH JETTY FROM 2000–2014  
[WDFW 2014]

	Steller sea lion (monthly)	Steller sea lion (daily)	California sea lion (monthly)	California sea lion (daily)	Harbor seal (monthly)	Harbor seal (daily)
November .....	1663	55	1214	40	0	0
December .....	1112	36	725	23	57	2
January .....	249	8	10	0.3	0	0
February .....	259	9	28	1	1	0.04
Average (all months) .....	821	27	494	16	15	0.5

To calculate the total estimated takes, we multiplied the estimated days of

activity by the associated average daily pinniped counts (monthly count/days of

the month and averaged across all months) for each species (table 7).

TABLE 7—ESTIMATED TAKE OF STELLER SEA LIONS, CALIFORNIA SEA LIONS, AND HARBOR SEALS

Pile type and method	Days of activity	Steller sea lion average count	Steller sea lion calculated take	California sea lion average count	California sea lion calculated take	Harbor seal average count	Harbor seal calculated take
36-in Steel Pile Impact Installation .....	52	27	1,404	16	832	0.5	26
30-in Steel Pile Impact Installation .....							

There is some potential for take by Level A harassment of harbor seals due to the largest zone being approximately 200 m and because of the cryptic nature and assumed lower detectability of harbor seals at this distance. Based on the relative proportion of the area expected to be ensonified above the Level A harassment threshold for phocid pinnipeds from impact pile driving (approximately 0.36 square kilometers (km<sup>2</sup>)) to the area ensonified above the Level B harassment threshold (1.1 km<sup>2</sup> for impact pile driving), we estimated that of the total number of harbor seals that may be located within the greater Level B harassment zone, approximately 33 percent would approach the pile driving activities closer and enter the smaller Level A harassment zone (197 m). Thus, we assume that 33 percent of the total estimated takes of harbor seals (26 individuals; see table 7) would be by Level A harassment. Therefore, we are

proposing to authorize 9 takes of harbor seals by Level A harassment and 17 takes by Level B harassment (table 8).

The Level A harassment zone for otariid pinnipeds is 0 m. The USCG would be required to enforce a minimum shutdown zone of 10 m for these species. At that close range, the USCG would be able to detect California sea lions and Steller sea lions and implement the required shutdown measures before any sea lions could enter the Level A harassment zone. Therefore, no takes of California sea lions or Steller sea lions by Level A harassment are requested or authorized.

*Harbor Porpoise*

Harbor porpoises are regularly observed in the coastal waters near the mouth of the Columbia River and are known to occur year-round, although this project occurs farther upstream in the Columbia River. Their nearshore abundance peaks with anchovy

presence, which is generally June through October. However, there was one recorded sighting of a harbor porpoise in the project area east of the jetties in the September–November timeframe (OBIS–SEAMAP 2019). During monitoring for pile driving at the Columbia River Jetty System which is at the mouth of the Columbia River approximately 23 km from the USCG's planned action area, over the course of a 5 day monitoring period, observers detected five harbor porpoises (Grette Associates 2016). Additionally we reviewed monitoring reports from four recent projects in the nearby area (Army Corps of Engineers King Pile Markers and Sand Island Pile Dike Test Piles, and Phase 1 and 2 of the City of Astoria Bridge Replacement which can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities#active-authorizations>). Only one project with

activities occurring over 15 days had eight sightings of harbor porpoise at Sand Island Dike.

Given that, there is some potential for harbor porpoise to be present near the project area, and based on the previously mentioned monitoring reports sighting data, we calculated that harbor porpoise could enter the Level B harassment zone every other day of pile

driving (or 0.5/day). To calculate the total estimated takes by Level B harassment, we multiplied the estimated days of activity by the associated daily harbor porpoise rate (table 8).

There is also some potential for take by Level A harassment of harbor porpoise due to the largest zone being approximately 300 m and because of the

cryptic nature and assumed lower detectability of harbor porpoise at this distance. The USCG anticipates that 12 harbor porpoises during impact driving could be taken by Level A harassment. Take by Level A harassment for harbor porpoise was calculated in the same way it was for harbor seals. In total, we are proposing to authorize take of 26 harbor porpoises (table 8).

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

Species	Stock	Take by Level A harassment	Take by Level B harassment	Total authorized take	Stock abundance	Percent of stock
Harbor Porpoise .....	Northern Oregon/Washington Coast.	12	14	26	21,487	0.1
California sea lion .....	U.S .....	0	832	832	257,606	0.3
Steller sea lion .....	Eastern .....	0	1,404	1,404	43,201	3.2
Harbor seal .....	Oregon/Washington Coast	9	17	26	24,732	0.1

### 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 (latter not applicable for this action). 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, and impact on operations.

#### Time Restrictions

The USCG has proposed in its description of the project that pile driving would occur only during daylight hours (no sooner than 30 minutes after sunrise through no later than 30 minutes before sunset), when visual monitoring of marine mammals can be conducted. In addition, ODFW requires all in-water construction be limited to the months of November through February to minimize impacts to ESA listed fish species.

#### Mitigation Measures

USCG must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant USCG staff are trained prior to the start of all pile driving activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the application and the IHA. USCG must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving, at least one PSO must be used.

The PSO will be stationed as close to the activity as possible;

- The placement of the PSOs during all pile driving activity will ensure that the entire shutdown zone, see table 9, is visible during pile driving activities. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (e.g., fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;

- Monitoring must take place from 30 minutes prior to initiation of pile driving activity (i.e., pre-clearance monitoring) through 30 minutes post-completion of pile driving activity;

- 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;

- USCG 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; and

- If a marine mammal is observed entering or within the shutdown zones indicated in table 9, pile driving must

be delayed or halted. 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 (table 9) or 15 minutes have passed without re-detection of the animal.

Shutdown Zones

USCG will establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment zone for each pile size/type where applicable, as shown in table 9.

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, work will stop and vessels will reduce speed to the minimum level required to maintain steerage and safe working conditions. A 10 m shutdown zone

would also serve to protect marine mammals from physical interactions with project vessels during pile driving and other construction activities, such as barge positioning or drilling. If an activity 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 9 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of 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.

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 will continue and the animal's presence within the estimated harassment zone will be documented.

USCG will also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes, and NMFS will be notified about species and precautions taken. Pile driving will proceed if the non-IHA species is observed to leave the Level B harassment zone or if 15 minutes have passed since the last observation.

If shutdown and/or clearance procedures would result in an imminent safety concern, as determined by USCG or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 9—SHUTDOWN ZONES AND MONITORING ZONES

Activity	Minimum shutdown zone (m)			Harassment zone (m)
	HF cetaceans	Phocid	Otariid	
36-in Impact Installation .....	300	50	10	610
30-in Impact Installation .....	220	50	10	610

Protected Species Observers

The placement of PSOs during all construction activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (e.g., fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs will monitor the full shutdown zones and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Based on our evaluation of USCG's planned measures, as well as other measures considered by NMFS, NMFS

has determined that the mitigation measures provide the means 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

Marine mammal monitoring must be conducted in accordance with the conditions in this section and the IHA. Marine mammal monitoring during pile driving activities will be conducted by PSOs meeting the following requirements:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
  - At least one PSO will have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
  - Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
  - Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction.
- PSOs must have the following additional qualifications:
- Ability to conduct field observations and collect data according to assigned protocols;
  - Experience or training in the field identification of marine mammals, including the identification of behaviors;
  - Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
  - Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
  - Ability to communicate orally, by radio or in person, with project personnel to provide real-time

information on marine mammals observed in the area as necessary.

- USCG must employ three PSOs during all pile driving activities depending on the size of the monitoring and shutdown zones. A minimum of one PSO must be assigned to monitor waters surrounding the active pile driving location.
- USCG must establish the following monitoring locations with the best views of monitoring zones as described below, in the IHA, and USCG's application.
- PSOs would be deployed in strategic locations around the harassment zone at all times during in-water pile driving. PSOs will be positioned at locations that provide full views of the impact hammering monitoring zones and the shutdown zones. PSOs will be stationed on the staging barges, on shore at the project site, and at the entrance to the commercial dock area at ETP. All PSOs will have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cell phones for maintaining contact with work crews.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will 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 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.

USCG shall conduct briefings between construction supervisors and crews, PSOs, USCG staff prior to the start of all pile driving activities and when new personnel join the work. These briefings will explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

#### Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report 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) and the total number of strikes for each pile;
  - 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 the time of sighting;
  - Time of sighting;
  - Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentifiable), 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 sightings (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, sex class, *etc.*);
  - Animal's closest point of approach and estimated time spent within the harassment zone;
  - 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 and shutdown 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; and
- 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 event that personnel involved in the construction activities discover an injured or dead marine mammal, the USCG must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) ([PR.ITP.MonitoringReports@noaa.gov](mailto:PR.ITP.MonitoringReports@noaa.gov)), NMFS and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, USCG must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The USCG must not resume their activities until notified by NMFS. The report must include the following information:

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

### **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, our analysis applies to all species listed in table 1 for which take could occur, given that NMFS expects the anticipated effects of the planned pile driving on different marine mammal stocks to be 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, NMFS has identified species-specific factors to inform the analysis.

Pile driving activities associated with the USCG construction project have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment, from underwater sounds generated from pile driving. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, limited take by Level A harassment is authorized for two species, but the potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Take by Level A harassment is authorized for harbor seals and harbor porpoise to account for the possibility that an animal could enter a Level A harassment zone prior to detection, and remain within that zone for a duration long enough to incur PTS before being observed and the USCG shutting down pile driving activity. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS, *i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving (*i.e.* the low-frequency region below 2 kHz), not severe hearing impairment or

impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of authorized take by Level A harassment is very low for both marine mammal species. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual’s long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The Level A harassment zones identified in table 5 are based upon an animal’s exposure to pile driving of up to three steel piles per day. Given the short duration to impact drive each pile and break between pile installations (to reset equipment and move piles into place), an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement in the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.*, PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the project site) of the stock’s range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving in the Columbia River are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Given that pile driving would occur for only a portion of the project's duration, any harassment occurring would be temporary. Additionally, many of the species present in region would only be present temporarily based on seasonal patterns or during transit between other habitats. These temporarily present species would be exposed to even smaller periods of noise-generating activity, further decreasing the impacts.

For all species, there are no known BIA near the project area that would be impacted by USCG's planned activities. While California sea lions and harbor seals are the species most likely to occur within the immediate project area the nearest haul out for both species is approximately 3 miles (4.8 km) away. There are three known haul out sites for both species near the project area including Tongue Point Sands, Taylor Sands, and Green Island/Sanborn Slough, the closest being Tongue Point Sands 3 miles (4.8 km) from the project area. Additionally, there is a Steller sea lion haul out in the Columbia River; it is approximately 15 miles (24.1 km) away from the project site at the south jetty off the western shoreline of Fort Stevens State Park. None of these haul outs are in the immediate project vicinity.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on each stock's continued survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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;

- Authorized Level A harassment would be very small amounts and of low degree;

- For all species, the mouth of the Columbia River is a very small and peripheral part of their range;

- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;

- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;

- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks;

- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and

- USCG would implement mitigation measures including soft starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activities 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. For all species, the authorized take is below one third of the population for all marine mammal stocks (Table 8).

Based on the analysis contained herein of the planned activity (including the 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.

#### 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.

#### 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.

#### Authorization

As a result of these determinations, NMFS issued an IHA to USCG for conducting impact pile driving associated with the ETP project in Astoria, Oregon, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The final IHA can be found at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-united-states-coast-guards-construction-astoria-oregon>.

Dated: November 7, 2023.

**Shannon Bettridge,**

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

[FR Doc. 2023-24980 Filed 11-13-23; 8:45 am]

**BILLING CODE 3510-22-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Wednesday, November 15, 2023—10:00 a.m.

**PLACE:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

**STATUS:** Commission Meeting—Open to the Public.

#### MATTERS TO BE CONSIDERED:

#### Decisional Matter

Infant Support Cushions Notice of Proposed Rulemaking—Briefing.

A live webcast of the meeting can be viewed at the following link: <https://cpsc.webex.com/cpsc/j.php?MTID=mbcafc15afe58d6ab3a943232e901ce9f>.

**CONTACT PERSON FOR MORE INFORMATION:** Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7479 (Office) or 240-863-8938 (Cell).

Dated: November 8, 2023.

**Sarah Bock,**

*Paralegal Specialist.*

[FR Doc. 2023-25098 Filed 11-8-23; 4:15 pm]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Notice of Intent To Grant Exclusive Patent License to Veloxint CIF, Inc.; Tridelphia, WV

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Department of the Army hereby gives notice of its intent to grant to Veloxint CIF, Inc.; a company having its principal place of business at 1142 Middle Creek Road, Tridelphia, WV 26059, an exclusive license.

**DATES:** Written objections must be filed not later than 15 days following publication of this announcement.

**ADDRESSES:** Send written objections to U.S. Army Combat Capabilities Development Command Army Research Laboratory, Partnerships Support Office, FCDD-RLB-SS/Jason Craley, Building 4402, 6468 Integrity Ct., Aberdeen Proving Ground, MD 21005-5425 or email to [ORTA@arl.army.mil](mailto:ORTA@arl.army.mil).

**FOR FURTHER INFORMATION CONTACT:** Jason Craley, (410) 306-1275, email: [ORTA@arl.army.mil](mailto:ORTA@arl.army.mil).

**SUPPLEMENTARY INFORMATION:** The Department of the Army plans to grant an exclusive license to Veloxint CIF, Inc. in all fields of use pertaining to the following:

—“Nano-Structured Alloy Material and Method of Synthesizing”, ARL 21-06, US Patent Application No. 17/700,653, Filing Date: 03/22/2022, U.S. Publication No. 2023/0302531A1, Publication Date: 09/28/2023, PCT Application No. PCT/US23/31342, Filing Date: 08/29/2023.

—“Oxidation and Corrosion Resistant Nanostructured Copper-Based Metallic Systems”, ARL 22-18, US Patent Application No. 18/127,398, Filing Date: 03/28/2023, PCT Application No. PCT/US23/32206, Filing Date: 09/07/2023.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Combat Capabilities Development Command Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). Competing applications completed and received by the U.S. Army Combat Capabilities Development Command Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as

objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**James W. Satterwhite Jr.,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2023-25063 Filed 11-13-23; 8:45 am]

**BILLING CODE 3711-02-P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; College Assistance Migrant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2024 for the College Assistance Migrant Program (CAMP), Assistance Listing Number 84.149A. This notice relates to the approved information collection under the Office of Management and Budget (OMB) control number 1894-0006.

#### DATES:

*Applications Available:* November 17, 2023.

*Deadline for Transmittal of Applications:* January 16, 2024.

*Deadline for Intergovernmental Review:* March 13, 2024.

#### Pre-Application Webinar Information:

The Department will hold a pre-application workshop via webinar for prospective applicants. The date and time of the workshop will be announced on the Department's website at: <https://oese.ed.gov/offices/office-of-migrant-education/college-assistance-migrant-program/applicant-information-college-assistance-migrant-program/>.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>. Please note that these Common Instructions supersede the version published on December 27, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Dylan Hart-Medina, Office of Migrant