

## **FINDING OF NO SIGNIFICANT IMPACT FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION FOR THE PORT OF ALASKA'S NORTH EXTENSION STABILIZATION STEP 1 (NES1) PROJECT IN ANCHORAGE, ALASKA**

**I. Purpose of Finding of No Significant Impact (FONSI):** The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). The Council on Environmental Quality (CEQ) Regulations direct agencies to prepare a Finding of No Significant Impact (FONSI) when an action not otherwise excluded will not have a significant impact on the human environment. 40 CFR §§ 1500.4(b), 1500.5(b), & 1501.6. To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action. 40 CFR § 1501.3(b). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR § 1501.3(b)(1)), and whether the project is considered minor or small-scale (NAO 216-6A CM, Appendix A-2). In considering the degree of effect on these resources, agencies should examine, as appropriate, short- and long-term effects, beneficial and adverse effects, and effects on public health and safety, as well as effects that would violate laws for the protection of the environment (40 CFR § 1501.3(b)(2)(i)-(iv); NAO 216-6A CM Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration. 40 CFR § 1501.3(b)(2)(i)-(iv). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing this FONSI, we reviewed the Environmental Assessment (EA) for the Issuance of an Incidental Harassment Authorization for the Take of Marine Mammals Incidental to the Port of Alaska's (POA) North Extension Stabilization Step 1 (NES1) Project in Anchorage, Alaska which evaluates the affected area, the scale and geographic extent of the proposed action, and the degree of effects on those resources (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude). The EA is hereby incorporated by reference. 40 CFR § 1501.6(b).

### **II. Approach to Analysis:**

NMFS proposes to issue an IHA to the POA pursuant to Section 101(a)(5)(D) of the MMPA and 50 Code of Federal Regulations (CFR) Part 216. This IHA will be valid for one year and will authorize takes, by Level A and Level B harassment, of small numbers of marine mammals incidental to construction activities related to the NES1 project in Anchorage, Alaska. The POA's activity will involve the removal of portions of the North Extension bulkhead, a failed sheet pile structure, and the reconfiguration of and realignment of the shoreline within the North Extension, including the conversion of approximately 0.05 square kilometers (km<sup>2</sup>; 13 acres) of developed land back to intertidal and subtidal habitat within Knik Arm. In-water construction associated with this project includes vibratory installation and removal of 81 24-inch (61-centimeter (cm)) or 36-inch (91-cm) temporary steel pipe stability template piles and vibratory removal, pile splitting and pile cutting (and possible impact removal) of approximately 4,216 sheet piles from the structure tailwalls, cell faces (bulkhead), and closure walls. The POA's activity is expected to begin in April 2024 and extend through November 2024. Construction is estimated to occur over approximately 250 hours on 110 nonconsecutive days.

Sound produced by the POA's construction activities has the potential to result in the take, by Level A and Level B harassment, of seven marine mammal species. Takes are expected to occur in the form of Level A harassment (slight permanent threshold shift (PTS)) or Level B harassment consisting of, at worst, temporary modification in the behavior of individual marine mammals. Specific to Cook Inlet beluga whales, effects would be limited to Level B harassment consisting of temporary modifications in behavior such as increased swim speeds, tighter group formations, and cessation of vocalizations, but not through the loss of foraging capabilities or abandonment of habitat. Therefore, the POA requested an authorization from NMFS for incidental taking pursuant to the MMPA. Authorizations for incidental takings of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the IHA must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

NMFS' proposed action is a direct outcome of the POA's request for an IHA to authorize take of marine mammals incidental to their NES1 project in Anchorage, Alaska, which includes vibratory pile installation and removal, and impact pile removal. The POA's action may cause effects to the resources in the affected area, though there is no potential for the effects of NMFS' action to add to the effects of other projects, including the POA's action, such that the effects taken together could be significant.

NMFS' proposed action, the issuance of an IHA to the POA for their NES1 project, is not considered to meaningfully contribute to a significant impact based on the scale of the impact (authorization of take of small numbers of seven species of marine mammal, by Level A and Level B harassment only), and the small-scale, temporary, and short-term duration of the impact. No take of marine mammals by serious injury or mortality is anticipated or proposed to be authorized in the IHA.

NMFS' proposed action, the issuance of an IHA to the POA, will not meaningfully contribute to significant impacts to specific resources, given the limited scope of NMFS' action and required mitigation measures, as described in the 2023 EA and this FONSI.

### **III. Geographic Extent and Scale of the Proposed Action:**

As stated in the 2023 EA, NMFS' proposed issuance of an IHA to the POA would authorize take of seven species of marine mammal incidental to construction activities related to the NES1 project in Anchorage, Alaska. The POA is located in Anchorage, Alaska, along the southeastern shoreline of Knik Arm in upper Cook Inlet. The POA's boundaries currently occupy an area of approximately 129 acres; the NES1 project would include the conversion of approximately 0.05 km<sup>2</sup> (13 acres) of developed land back to intertidal and subtidal habitat within Knik Arm. A detailed map showing the NES1 project area is provided in the EA (Figure 1). The environmental effects analyzed in the 2023 EA would occur at a small scale.

#### IV. Degree of Effect:

- A. *The potential for the proposed action to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection.*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would not violate any federal, state, or local laws for environmental protection. NMFS' compliance with environmental laws and regulations is based on NMFS' action and the nature of the applicant's activities. NMFS complied with the requirements of the MMPA in developing the IHA. NMFS Office of Protected Resources (OPR) also consulted with the NMFS Alaska Region under Section 7 of the ESA to determine if the issuance of the IHA would likely jeopardize the continued existence of listed species or result in the destruction or adverse modification of ESA designated critical habitat. The Section 7 consultation concluded that the issuance of the IHA would not jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat, described further in section C, below. The POA would be required to obtain any additional federal, state, and local permits necessary to carry out NES1 project and any other associated activities.

- B. *The degree to which the proposed action is expected to affect public health or safety.*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals is not likely to affect public health or safety because NMFS only authorizes the take of marine mammals associated with the POA's construction activities, which does not involve the public or expose the public directly (e.g., chemicals, diseases) or indirectly (e.g., food sources) to hazardous or toxic materials in a way that would be linked to the quality of the environment and well-being of humans. Furthermore, public access, including vessel use, is restricted around the POA.

- C. *The degree to which the proposed actions is expected to affect a sensitive biological resource, including:*

- a. *Federal threatened or endangered species and critical habitat;*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals is not expected to have a significant impact on endangered or threatened species or critical habitat. Based on the conclusions of the ESA section 7 consultation (summarized below) along with mitigation measures designed to avoid, minimize and mitigate impacts to ESA-listed species and critical habitat, NMFS expects that any impacts to ESA-listed marine mammals, as well as their critical habitat, would be limited to slight auditory injury (PTS) or behavioral harassment as a result of take, by acoustic exposure to pile driving and removal, and would not be significant.

The POA's proposed NES1 project has the potential to affect the following species listed as threatened or endangered under the ESA: Cook Inlet beluga whales, humpback whales (Mexico Distinct Population Segment (DPS) and Western North Pacific DPS), and western DPS Steller sea lions. In 2023, NMFS' Permits and Conservation Division initiated consultation with NMFS' Alaska Regional Office for the issuance of the IHA. In December 2023, NMFS' Endangered Species Act Interagency Cooperation Division concluded that NMFS' issuance of the IHA is not likely to jeopardize the continued existence of these endangered or threatened species and would not affect critical habitat, and issued a Biological Opinion

providing conclusions specific to NMFS' actions relevant to the proposed construction activities.

NMFS also requires the implementation of mitigation to reduce potential exposure of marine mammals to sound levels likely to result in take. These are described in detail in the EA and notice of issuance of the IHA, as well in section VI of this FONSI.

The only critical habitat designation within the action area relevant to NMFS' action is for Cook Inlet beluga whales, which includes much of Cook Inlet, Alaska. The waters directly surrounding the POA are excluded from critical habitat designation but noise from pile driving and removal will propagate into critical habitat. Use of the critical habitat by Cook Inlet beluga whales of the greater habitat area varies temporally, specifically with a peak in beluga abundance in Knik Arm in later summer and early autumn months (i.e., August, September, and October). As described above, NMFS is requiring stringent mitigation and monitoring measures throughout the construction season (April through November) and will require the POA to complete as much work as is practicable in April to July to reduce the amount of pile driving and removal activities needed in August through November. The action is not likely to destroy or adversely modify Cook Inlet beluga whale, or other listed species, critical habitat.

Therefore, in consideration of the factors above, while NMFS' proposed action is likely to adversely affect ESA-listed species, the potential impacts are not expected to be significant as defined under NEPA.

- b. *Stocks of marine mammals as defined in the Marine Mammal Protection Act;* NMFS' proposed action of issuing an IHA to the POA has the potential to result in the take of small numbers of seven species of marine mammals, by Level A (harbor porpoise and harbor seal only) and Level B harassment (all seven species), as defined in the MMPA. However, we expect take to result in a negligible impact on species or stocks. Importantly, effects on individuals or groups of animals does not necessarily translate into an adverse effect to a stock or species, unless such effects result in reduced fitness for those individuals and, ultimately, accrue to the point that there is reduced reproduction or survival leading to effects on annual rates of recruitment or survival for the species.

In addition to considering estimates of the number of marine mammals that may be "taken" by harassment, NMFS considered other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. NMFS also assessed 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 environmental 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).

For this proposed action, the taking of marine mammals would be incidental to pile driving and removal associated with the POA's NES1 project. The source of harassment would be limited to noise exposure from pile driving and removal. NMFS calculated the number of estimated exposures of marine mammals to noise levels exceeding our thresholds approximating Level A and Level B harassment based on in-situ sound measurements. In general, the effects on marine mammals from pile driving and removal are expected to be temporary and lower level and may include, but are not limited to, hearing threshold shift (temporary and permanent), masking, stress response, and behavioral changes such as temporary avoidance of the immediate vicinity of pile driving and removal, increased travel speed and dive times, and cessation of foraging and vocalizing. The magnitude of the effect of sound on marine mammals is highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. For the POA activities, the required mitigation and monitoring measures prescribed in the IHA and described in the EA (including the implementation of shutdown zones) will result in reduced exposure to pile driving and removal noise and help further ensure that any resulting take will impact the fitness of any individual marine mammals or, thereby, have any effect on any annual rates of recruitment or survival. The number of anticipated takes are low relative to the estimated abundance of the affected stock (less than 2 percent for all stocks except 22 percent for the Cook Inlet beluga whale stock)

Additionally, the POA's proposed action is temporary and of relatively short duration. Potential adverse effects on prey species would also be temporary and spatially limited. Furthermore, alternate areas of similar habitat value for affected marine mammals would be available allowing animals to temporarily vacate the affected areas to avoid exposure to sound.

For these reasons, impacts resulting from this activity are not expected to significantly affect the marine mammal species or stocks as defined in the MMPA. Accordingly, NMFS determined that the specified activity would have a negligible impact on the affected species and stocks of marine mammals.

The mitigation measures required by the IHA to ensure the least practicable impact on affected marine mammals and their habitat, are described in the Mitigation Measures section of the 2023 EA and are summarized below in section VI of this FONSI.

c. *Essential fish habitat identified under the Magnuson–Stevens Fishery Conservation and Management Act;*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals, by Level A or Level B harassment, would not adversely affect essential fish habitat as identified under the Magnuson-Stevens Fishery Conservation and Management Act. Essential fish habitat has been designated in the estuarine and marine waters in the vicinity of the proposed project area for all five species of salmon (i.e., chum salmon, pink salmon, coho salmon, sockeye salmon, and Chinook

salmon), which are common prey of marine mammals, as well as for other species. However, there are no designated habitat areas of particular concern in the vicinity of the POA, and therefore, adverse effects on essential fish habitat in this area are not expected. Further, once in-water pile installation and removal has ceased and NES1 is complete, the newly available habitat is expected to transition back to its original, more natural condition and provide foraging, migrating, and rearing habitats to fish and foraging habitat to marine mammals. In general, any negative impacts on fish habitat are expected to be minor and temporary.

- d. *Bird species protected under the Migratory Bird Treaty Act;*  
NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals, by Level A or Level B harassment, would not result in a significant adverse effect on a population of migratory bird species. The impacts of NMFS' proposed action on marine mammals would be temporary and localized in nature and would not result in substantial impacts to marine mammals or to their role in the ecosystem, including in relation to birds.
  
- e. *National marine sanctuaries or monuments;*  
NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would not affect a national marine sanctuary or monument, as the POA's proposed activity does not take place within or near either. Therefore, take authorized under the IHA, if issued, would also not occur within or near a national marine sanctuary or monument.
  
- f. *Vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems;*  
NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would not cause substantial damage to vulnerable marine or coastal ecosystems, as the action would be limited to the authorization of take by Level A and Level B harassment of marine mammals incidental to the POA's NES1 construction activities. IHAs do not authorize the underlying activity (in this case, pile driving and removal), only the take incidental to that activity. The incidental harassment of marine mammals would not have any effect on vulnerable marine or coastal ecosystems, nor any aspects of biodiversity or functioning of marine ecosystems, in a significant manner.

As described elsewhere in this document and the EA, the impact from our action is limited to impacts to marine mammals and their habitat, due to the potential increased noise levels into the marine environment during pile driving and removal. The scientific literature does indicate that impacts to the marine mammal habitat, in the form of effects to marine mammal prey species, is likely. Studies have shown that some fish and invertebrate species may experience displacement or behavioral changes as a result of acoustic exposure from pile driving and removal, such as temporary displacement or cessation in vocalization. However, any noise impact is expected to be limited to the duration of pile driving and removal. Thus, short-term, minor adverse effects are likely to occur but are not expected to rise to the level of significance. Furthermore, we do not anticipate significant physical interactions from pile driving and removal on the environment, other than temporary disturbance and

temporarily increased turbidity in the vicinity of pile driving and removal, and do not expect that noise from pile driving and removal would impact coastal ecosystems.

g. *Biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would not have a substantial impact on biodiversity or ecosystem functioning within the affected environment. NMFS expects that the POA's proposed action may result in take by Level A and Level B harassment, and has proposed issuing an IHA to authorize this take. Any impacts would be temporary and localized in nature and would not result in substantial impacts to marine mammals in the area or to their role in the ecosystem. Take by serious injury or mortality is not anticipated nor proposed to be authorized.

Cook Inlet beluga whales may avoid foraging near the site of the NES1 project during pile driving and removal; however, the area near the POA is not considered high quality foraging habitat and richer, more productive and significant foraging grounds north of the POA would not be ensonified from pile driving and removal. The effects of our proposed action are expected to be limited to behavioral disturbance, masking, or stress. These effects are anticipated to be short term, minor, and localized. Any PTS incurred by non-Cook Inlet beluga whales is expected to be minor (slight threshold shift).

Some recent studies show potential impacts on zooplankton, which form the basis of many food webs, but while there is some scientific disagreement on impacts to zooplankton from this activity, those impacts are not expected to affect predator-prey relationships or otherwise impact any form of benthic productivity. Further, many marine mammals are primarily targeting eulachon runs and pile driving and removal is not anticipated to effect the life cycles of fish such that those fish would not be available as prey.

D. *The degree to which the proposed action is reasonably expected to affect a cultural resource: properties listed or eligible for listing on the National Register of Historic Places; archeological resources (including underwater resources); and resources important to traditional cultural and religious tribal practice.*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would have no foreseeable impact to unique areas, such as historic or cultural resources, parkland, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas. NMFS expects that the POA's proposed action may result in take by Level A or Level B harassment, in the form of short-term and localized changes in behavior or slight auditory injury in non-beluga species. Such harassment is not expected to substantially impact ecologically critical areas or cultural resources, as the impacts would be to marine mammals themselves as well as being temporary and localized in nature. Take by injury serious injury or mortality is not anticipated nor proposed to be authorized.

As stated in Table 1 of the 2023 EA, no known historical and cultural resources are located within the POA's action area.

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals is not reasonably likely to cause impacts to resources important to traditional culture and religious tribal practice, given the short-term, temporary nature of the activity, and the negligible impact of the take on affected marine mammals. As stated in Chapter 4 of the 2023 EA, though seals are harvested for subsistence uses by several communities along Cook Inlet, the POA's proposed action (and therefore, the take of seals that would be authorized through the IHA), would occur for a brief period of time outside of the primary subsistence hunting areas. As described in the EA, Cook Inlet beluga whales were historically harvested for subsistence uses but no hunt has occurred since 2005. Further, take of marine mammals by serious injury or mortality is not anticipated nor proposed to be authorized in the IHA.

The effects of the issuance of this IHA is limited to those occurring to marine mammals and their habitat; and, therefore, NMFS' proposed action is not expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. Likewise, it is not expected to cause loss or destruction of significant scientific, cultural, or historical resources. The underlying pile driving and removal activities would take place at the POA and there are no such resources there; therefore, the chance of affecting such resources is so remote and unlikely as to be discountable.

- E. *The degree to which the proposed action has the potential to have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898).*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would have no foreseeable impact to minority or low-income communities, let alone a disproportionately high impact to those communities in comparison to the impacts on other communities. The site of the NES1 project is unlikely to overlap with activities conducted by the public. Public access, including vessel use, is restricted around the POA. NMFS only authorizes the take of marine mammal species associated with pile driving and removal, which does not involve the public.

- F. *The degree to which the proposed action is likely to result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals would not result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species. The IHA would be limited to the take of marine mammals incidental to construction activities associated with the POA's proposed NES1 project. IHAs do not authorize the underlying activity (in this case, pile driving and removal), only the take incidental to that activity. The



incidental take of marine mammals, by Level A and Level B harassment, that would be authorized under the IHA would not contribute to the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.

Furthermore, while the NES1 project would result in increased vessel use during construction, leading to ballast water exchange, the vessels are primarily small work skiffs that are not uncommon to Cook Inlet. Further, POA is required to implement best management practices to prevent the introduction, continued existence, or spread of noxious organisms or other non-native species. Therefore, it is not likely that NMFS' issuance of the IHA would promote or result in the introduction or spread of noxious weeds or nonnative invasive species at a level that would reach significance under NEPA

*G. The potential for the proposed action to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resource such as marshland or seagrass) or over which there is substantial uncertainty or scientific disagreement.]*

NMFS' proposed action of issuing an IHA to the POA to incidentally take marine mammals is not expected to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resource such as marshland or seagrass) or over which there is substantial uncertainty or scientific disagreement. NMFS' proposed IHA would authorize incidental take by Level A and Level B harassment of seven species of marine mammal. The take that is expected to occur and proposed for authorization is based on the best available science. This incidental take is expected to be in the form of short-term and localized changes in behavior and/or temporary displacement, based on numerous scientific studies, modeling informed by scientific studies, and monitoring conducted as a requirement under previous IHAs for other projects. Take by serious injury, or mortality is not anticipated nor proposed to be authorized.

The POA's construction activities would occur within the same footprint as existing marine infrastructure, and when construction is complete, subtidal and intertidal habitats previously lost at the project site would be restored. Impacts to the immediate substrate are anticipated, but these would be limited to minor, localized, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time but which would not be expected to have any effects on physical or biological resources. While the area is generally not high quality habitat, it is expected to be of higher quality to marine mammals and fish after NES1 construction is complete as the site returns to its natural state and is colonized by marine organisms.

#### **V. Other Actions Including Connected Actions:**

As described in Section 1.4 (Purpose and Need) of the 2023 EA, NMFS' proposed action and the purpose and need for that action, are a direct outcome of the POA's request for an MMPA IHA in connection with construction activities associated with the NES1 project. The Cumulative Impacts section of the 2023 EA discusses cumulative impacts, and describes other known recent past, present, and reasonably foreseeable future actions within the vicinity of the POA's action area. As described in the EA, the POA's activities are short-term and conducted over approximately 250 hours on 110 nonconsecutive days. Based on the past, present, and reasonably foreseeable future

actions within the NES1 project area, the incidental take associated with NMFS' issuance of the IHA is not expected to considerably contribute to any cumulative impacts from all other actions and activities in Cook Inlet.

## **VI. Mitigation and Monitoring:**

The proposed action was developed to be consistent with previous IHAs issued to the POA. The following mitigation measures are included in the IHA and will be undertaken to avoid significant impacts under NEPA:

- Training of construction supervisors and crews, the protected species observers (PSO) monitoring team, and relevant POA staff prior to the start of construction activities;
- The establishment of shutdown zones equivalent to or greater than the estimated Level A harassment zones for non-beluga species;
- The establishment of shutdown zones equivalent to the estimated Level B harassment zone for beluga whales;
- The establishment of measures to avoid direct physical interactions with marine mammals;
- The establishment of a minimum of two PSO stations to ensure that shutdown zones are fully monitored and that shutdowns are implemented as necessary;
- Monitoring of shutdown zones 30 minutes prior and 30 minutes post-completion of pile driving activity;
- The implementation of soft start protocols during impact driving;
- Cease or delay of in-water activity if a marine mammal is observed entering or is within a shutdown zone; and
- The establishment of shut down measures if any species for which take has not been authorized enters the estimated Level B harassment zone.


NMFS has determined that the required mitigation measures are sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals and their habitat, as required by the MMPA. In addition, the following monitoring and reporting requirements are included in the IHA:

- Employment of at least two PSOs at each PSO station to monitor the shutdown zones;
- Placement of PSO stations at the best vantage points to observe the entire estimated Level A harassment zones and shutdown zones;
- Submission of weekly and monthly monitoring reports (that include raw electronic data sheets), which include a summary of marine mammal species and behavioral observations, construction shutdowns or delays, and construction work completed;
- Submission of a draft final report detailing monitoring within ninety days after the completion of the activity or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first;
- Preparation and submission of final reports within thirty days following resolution of comments on each draft report from NMFS;
- Submission of all PSO datasheets and/or sighting data (in a separate file from the final report referenced immediately above); and
- Reporting of injured or dead marine mammals.

## DETERMINATION

The CEQ NEPA regulations, 40 CFR § 1501.6, direct an agency to prepare a FONSI when the agency, based on the EA for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and the analysis contained in the supporting EA prepared for the POA's NES1 project in Anchorage, Alaska, it is hereby determined that the issuance of an IHA for the take of marine mammals incidental to the POA's NES1 project in Anchorage, Alaska will not significantly impact the quality of the human environment. The Environmental Assessment for the Issuance of an Incidental Harassment Authorization for the Take of Marine Mammals Incidental to the POA's NES1 Project in Anchorage, Alaska is hereby incorporated by reference. In addition, all beneficial and adverse impacts of the proposed action as well as mitigation measures have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

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