



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

January 6, 2023

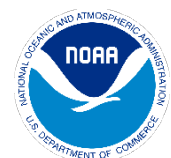
Col. Damon Delarosa
U.S. Army Corps of Engineers, Alaska District
Regulatory Division
P.O. Box 6898
JBER, Alaska 99506-0898

Re: Halverson Pile Replacement Project, Hunter Bay, Alaska, xLOC POA-2007-00476, AKRO-2022-02590

Dear Colonel Delarosa:

This letter responds to your request for concurrence from the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the proposal to perform maintenance to a dock in Hunter Bay, including replacement of nine, 12.75-inch fiberglass fender piles with galvanized steel piles using vibratory pile driving or down the hole (DTH) drilling (if needed). NMFS received an initial request for an informal consultation on October 7, 2022. The initial request letter did not contain several mitigation measures specific to protected species observer (PSO) requirements, information regarding project-related vessels, or effects determinations for the action. NMFS requested this information on October 11, 2022, and after several more clarifying communications, a revised letter from USACE was received on October 24, 2022. NMFS requested clarification on PSO locations based on the revised letter and received an updated action area map with PSO locations and the request from USACE to include DTH drilling as a backup option for pile installation on November 16, 2022. Due to the increase in the size of the action area for this activity, NMFS requested a new action area map and inclusion of mitigation measures specific to DTH drilling, which were received on November 29, 2022. Based on the additional information received, your request qualified for our expedited review and concurrence because it met our screening criteria and contained all required information on your proposed action, mitigation measures, and its potential effects to listed species and designated critical habitat. Expedited consultation for this proposed action commenced on November 30, 2022.

We reviewed your consultation request document and related materials. Our analysis of this project's effects on listed species and critical habitats relied upon the project description you provided, including all of the proposed mitigation measures. Through the consultation process, mitigation measures were updated and agreed upon with the U.S. Army Corps of Engineers (see attachment). Failure to implement any of these mitigation measures may require reinitiation of consultation as described below (50 CFR 402.16(a)(3)).



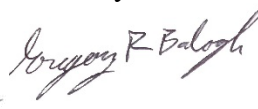
Based on our knowledge, expertise, and the materials you provided, we concur with your conclusions that the proposed action is not likely to adversely affect Mexico DPS humpback

whales (*Megaptera novaeangliae*). A complete administrative record of this consultation is on file at the Anchorage NMFS office.

Reinitiation of consultation is required where discretionary federal involvement or control over the action has been retained or is authorized by law and if (1) take of listed species occurs, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (3) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter, or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

Please direct any questions regarding this letter to Jenna Malek, at jenna.malek@noaa.gov or 907-271-1332.

Sincerely,


for

Anne Marie Eich, Ph.D.
Assistant Regional Administrator
for Protected Resources

Attachments: Updated Project Mitigation Measures
USACE's Consultation Request Letter

cc: Jacobie Schwenke Jacobie.Schwenke@usace.army.mil

The following mitigation measures have been agreed upon by USACE and NMFS for project POA-2007-00476/AKRO-2022-02590. For all reporting that results from implementation of these mitigation measures, NMFS will be contacted using the contact information specified in Table 2. In all cases, notification will reference the NMFS consultation tracking number (e.g., AKRO-2022-02590).

General Mitigation Measures

1. The agent, Sever Paulson, will inform NMFS of impending in-water activities a minimum of one week prior to the onset of those activities (email information to akr.section7@noaa.gov).
2. If construction activities will occur outside of the time window specified in this letter, the USACE will notify NMFS of the situation at least 60 days prior to the end of the specified time window to allow for reinitiation of consultation.
3. In-water work will be conducted at the lowest points of the tidal cycle feasible.
4. Consistent with AS 46.06.080, trash will be disposed of in accordance with state law. In addition, the Sever Paulson will ensure that all closed loops (e.g., packing straps, rings, bands) will be cut prior to disposal. In addition, the project proponent will secure all ropes, nets, and other marine mammal entanglement hazards so they cannot enter public waterways.

Protected Species Observer (PSO)-related measures

The following pre-clearance and shutdown zone measures are the same for all in-water activities. Additional mitigation measures specific to each activity are listed in subsections below.

5. One or more PSOs will perform PSO duties onsite throughout pile driving and down-the-hole (DTH) drilling (as needed).
6. For each in-water activity, PSOs will monitor all marine waters within the indicated shutdown zone radius for that activity (Table 1).

Table 1. Shutdown Zones for Each Activity

| Activity | Zone Radius (km) |
|---------------------------------|-------------------------|
| DTH (as needed) | 13.6 km |
| Vibratory Pile Driving | 2.154 km |
| Impact Pile Driving (as needed) | 0.046 km |

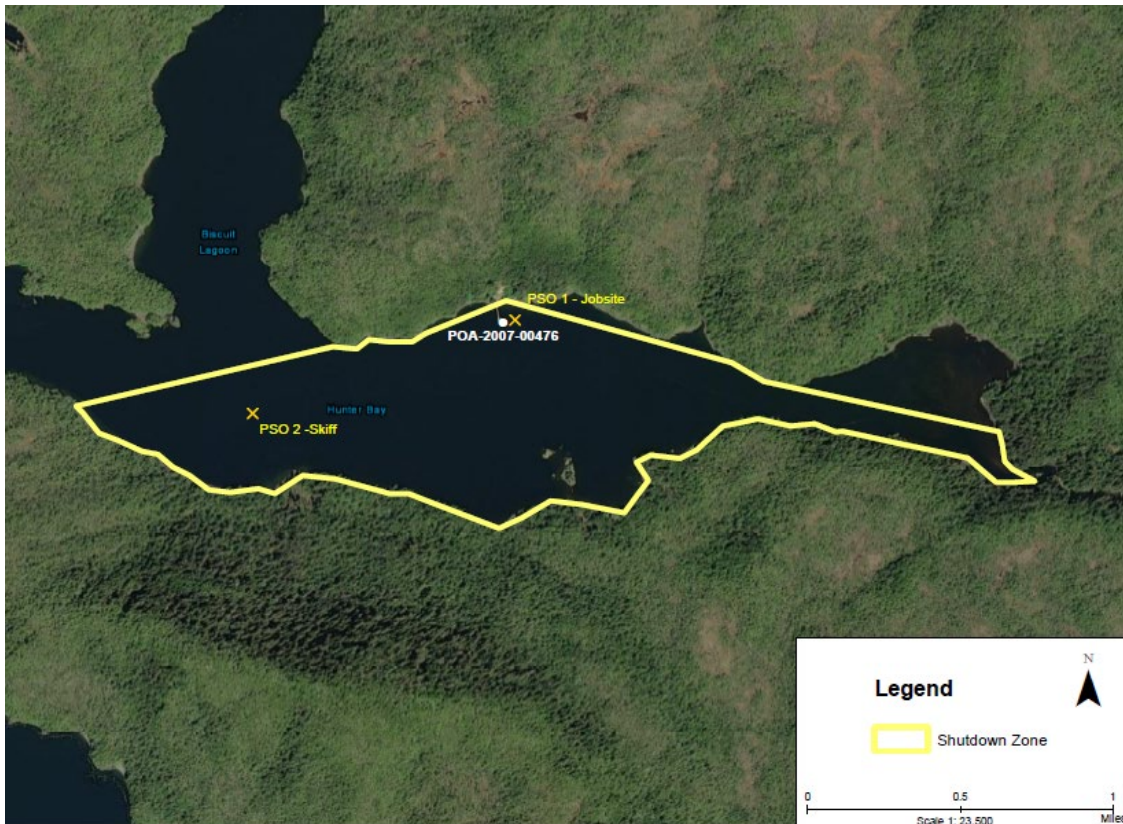


Figure 1. Shutdown zone based on DTH, including PSO placement.

7. PSOs will be positioned such that they will collectively be able to monitor the entirety of each activity’s shutdown zone. The proponent will coordinate with NMFS on the placement of PSOs prior to commencing in-water work.
8. Prior to commencing pile driving and DTH, PSOs will scan waters within the DTH shutdown zone and confirm no listed species are within the shutdown zone for at least 30 minutes immediately prior to initiation of the in-water activity. This will include clearance of the action area extending east into the back of the bay by the skiff-based PSOs prior to being stationed near the western mouth of the bay. If one or more listed species are observed within the shutdown zone, the in-water activity will not begin until the listed species exit the shutdown zone of their own accord, or the shutdown zone has remained clear of listed species for 30 minutes immediately prior to pile driving or DTH.
9. The on-duty PSOs will continuously monitor the shutdown zone and adjacent waters during pile driving and DTH operations for the presence of listed species.
10. In-water activities will take place only:
 - a. between sunrise and sunset.
 - b. when the entire shutdown zone and adjacent waters are visible (e.g., monitoring effectiveness is not reduced due to rain, fog, snow, haze or other environmental/atmospheric conditions).
11. If visibility degrades such that a PSO can no longer ensure that the shutdown zone remains devoid of listed species during pile driving or DTH, the crew will cease in-water

work until the entire shutdown zone is visible and the PSO has indicated that the zone has remained devoid of listed species for 30 minutes.

12. The PSO will order the pile driving or DTH activities to immediately cease if one or more listed species has entered, or appears likely to enter, the associated shutdown zone.
13. If pile driving or DTH activities are shut down for less than 30 minutes due to the presence of listed-species in the shutdown zone, pile driving and DTH activities may commence when the PSO provides assurance that listed species were observed exiting the shutdown zone. Otherwise, the activities may only commence after the PSO provides assurance that listed species have not been seen in the shutdown zone for 30 minutes (for cetaceans) or 15 minutes (for pinnipeds).
14. If a listed species is observed within a shutdown zone or is otherwise harassed, harmed, injured, or disturbed, PSOs will immediately report that occurrence to NMFS using the contact information specified in Table 2.

Protected Species Observer Requirements

15. PSOs will be someone other than the applicant and must have no other assigned tasks during monitoring periods.
16. The USACE will provide resumes or qualifications of PSO candidates to the NMFS consultation biologist or section 7 coordinator for approval at least one week prior to in-water work. NMFS will provide a brief explanation of lack of approval in instances where an individual is not approved.
17. At least one PSO will have prior experience performing the duties of a PSO during construction activity.
18. At least one PSO on the project will complete PSO training prior to deployment (e.g., see <https://aisobservers.com/protected-species/new-protected-species-observer-training/>). The training will include:
 - a. field identification of marine mammals and marine mammal behavior;
 - b. ecological information on marine mammals and specifics on the ecology and management concerns of those marine mammals;
 - c. ESA and MMPA regulations;
 - d. proper equipment use;
 - e. methodologies in marine mammal observation and data recording and proper reporting protocols; and
 - f. an overview of PSO roles and responsibilities.
19. PSOs will:
 - a. have the ability to effectively communicate orally, by radio and in person, with project personnel;
 - b. be able to collect field observations and record field data accurately and in accordance with project protocols and provide an understandable summary of those observations;

- c. be able to identify protected species that occur in the action area at a distance equal to the outer edge of the shutdown zone;
- 20. PSOs will work in shifts lasting no longer than 4 hours with at least a 1-hour break from monitoring duties between shifts. PSOs will not perform PSO duties for more than 12 hours in a 24-hour period.
- 21. PSOs will have the ability to effectively communicate orally, by radio and in person, with project personnel to provide real-time information on listed species.
- 22. PSOs will have the ability and authority to order appropriate mitigation response, including shutdowns, to avoid takes of all listed species.
- 23. The PSOs will:
 - a. communicate in real time with the construction crew
 - b. effectively observe the entirety of the shutdown zone
 - c. identify marine mammals
 - d. record the date, time, species, and coordinates of all observed marine mammals.
 - e. have instruments that allow them to estimate geographic coordinates of observed marine mammals
 - f. possess a legible copy of this LOC, these mitigation measures, and all appendices
 - g. possess legible and fillable observation record forms allowing for data entry.
- 24. Prior to commencing in-water work or at changes in watch, PSOs will establish a point of contact with the construction crew. The PSO will brief the point of contact as to the shutdown procedures if listed species are observed likely to enter or within the shutdown zone, and will request that the point of contact instruct the crew to notify the PSO when a marine mammal is observed. If the point of contact goes "off shift" and delegates his duties, the PSO must be informed and brief the new point of contact.

Down the Hole (DTH) drilling

- 25. If no listed species are observed within the DTH pile driving shutdown zone for 30 minutes immediately prior to pile driving, including clearance of the eastern head of the bay, soft-start procedures will be implemented immediately prior to activities. Soft start requires contractors to activate the drilling equipment at no more than half the operational power for several seconds, followed by a 30 second waiting period, then two subsequent reduced power start-ups. A soft start must be implemented at the start of each day's DTH pile driving, any time pile driving has been shut down or delayed due the presence of a listed species, and following cessation of pile driving for a period of 30 minutes or longer.
- 26. Following a lapse of pile driving activities of more than 30 minutes, the PSO will authorize resumption of pile driving only after the PSO provides assurance that listed species have not been present in the shutdown zone for at least 30 minutes immediately prior to resumption of operations, including clearance of the eastern head of the bay.

Vibratory Pile Driving

28. If no listed species are observed within the vibratory pile driving shutdown zone for 30 minutes immediately prior to pile driving, vibratory pile driving may commence. This pre-pile driving observation period will take place at the start of each day's vibratory pile driving, each time pile driving has been shut down or delayed due the presence of a listed species, and following cessation of pile driving for a period of 30 minutes or longer.
29. Following a lapse of vibratory pile driving activities of more than 30 minutes, the PSO will authorize resumption of vibratory pile driving only after the PSO provides assurance that listed species have not been present in the shutdown zone for at least 30 minutes immediately prior to resumption of operations.

Project-Dedicated Vessels

30. Vessel operators will:
 - a. maintain a watch for marine mammals at all times while underway;
 - b. stay at least 91 m (100 yd) away from listed marine mammals, except they will remain at least 460 m (500 yd) from endangered North Pacific right whales;
 - c. travel at less than 5 knots (9 km/hour) when within 274 m (300 yd) of a whale;
 - d. avoid changes in direction and speed when within 274 m (300 yd) of a whale, unless doing so is necessary for maritime safety;
 - e. not position vessel(s) in the path of a whale, and will not cut in front of a whale in a way or at a distance that causes the whale to change direction of travel or behavior (including breathing/surfacing pattern);
 - f. check the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged;
 - g. reduce vessel speed to 10 knots or less when weather conditions reduce visibility to 1.6 km (1 mi) or less;
31. Adhere to the Alaska Humpback Whale Approach Regulations when vessels are transiting to and from the project site: (see 50 CFR §§ 216.18, 223.214, and 224.103(b)) (note: these regulations apply to all humpback whales). Specifically, pilot and crew will not:
 - a. approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale), within 100 yards of any humpback whale;
 - b. cause a vessel or other object to approach within 100 yards of a humpback whale;
 - c. disrupt the normal behavior or prior activity of a whale by any other act or omission.
32. If a whale's course and speed are such that it will likely cross in front of a vessel that is underway, or approach within 91 m (100 yd) of the vessel, and if maritime conditions safely allow, the engine will be put in neutral and the whale will be allowed to pass

beyond the vessel, except that vessels will remain 460 m (500 yd) from North Pacific right whales.

33. Vessels will take reasonable steps to alert other vessels in the vicinity of whale(s).
34. Vessels will not allow lines to remain in the water unless both ends are under tension and affixed to vessels or gear. No materials capable of becoming entangled around marine mammals will be discarded into marine waters.

General Data Collection and Reporting

Data Collection

35. PSOs will record observations on data forms or into electronic data sheets.
36. The project proponent will ensure that PSO data will be submitted electronically in a format that can be queried such as a spreadsheet or database (i.e., digital images of data sheets are not sufficient).
37. PSOs will record the following:
 - a. the date, shift start time, shift stop time, and PSO identifier;
 - b. date and time of each reportable event (e.g., a marine mammal observation, operation shutdown, reason for operation shutdown, change in weather);
 - c. weather parameters (e.g., percent cloud cover, percent glare, visibility) and sea state where the Beaufort Wind Force Scale will be used to determine sea-state (<https://www.weather.gov/mfl/beaufort>);
 - d. species, numbers, and, if possible, sex and age class of observed marine mammals, and observation date, time, and location;
 - e. the predominant anthropogenic sound-producing activities occurring during each marine mammal observation;
 - f. bearing and direction of travel of observed marine mammal(s);
 - g. observations of marine mammal behaviors and reactions to anthropogenic sounds and presence;
 - h. initial, closest, and last location of marine mammals, including distance from observer to the marine mammal, and minimum distance from the predominant sound-producing activity or activities to marine mammals;
 - i. whether the presence of marine mammals necessitated the implementation of mitigation measures to avoid acoustic impact, and the duration of time that normal operations were affected by the presence of marine mammals;
 - j. geographic coordinates for the observed animals, with the position recorded by using the most precise coordinates practicable (coordinates will be recorded in decimal degrees, or similar standard and defined coordinate system).

Unauthorized Take

38. If a listed marine mammal is determined by the PSO to have been disturbed, harassed, harmed, injured, or killed (e.g., a listed marine mammal(s) is observed entering a

shutdown zone before operations can be shut down, or is injured or killed as a direct or indirect result of this action), the PSO will report the incident to NMFS within one business day, with information submitted to akr.section7@noaa.gov. These PSO records will include:

- a. all information to be provided in the final report (see Mitigation Measures under the *Final Report* heading below);
- b. number of animals of each threatened and endangered species affected;
- c. the date, time, and location of each event (provide geographic coordinates);
- d. description of the event;
- e. the time the animal(s) was first observed or entered the shutdown zone, and, if known, the time the animal was last seen or exited the zone, and the fate of the animal;
- f. mitigation measures implemented prior to and after the animal was taken; and
- g. if a vessel struck a marine mammal, the contact information for the PSO on duty, or the contact information for the individual piloting the vessel if there was no PSO on duty;
- h. Photographs or video footage of the animal(s) (if available).

Stranded, Injured, Sick or Dead Marine Mammal (not associated with the project)

39. If PSOs observe an injured, sick, or dead marine mammal (i.e., stranded marine mammal), they will notify the Alaska Marine Mammal Stranding Hotline at 877-925-7773. The PSOs will submit photos and available data to aid NMFS in determining how to respond to the stranded animal. If possible, data submitted to NMFS in response to stranded marine mammals will include date/time, location of stranded marine mammal, species and number of stranded marine mammals, description of the stranded marine mammal's condition, event type (e.g., entanglement, dead, floating), and behavior of live-stranded marine mammals.

Illegal Activities

40. If PSOs observe marine mammals being disturbed, harassed, harmed, injured, or killed (e.g., feeding or unauthorized harassment), these activities will be reported to NMFS Alaska Region Office of Law Enforcement at (Table 2; 1-800-853-1964).
41. Data submitted to NMFS will include date/time, location, description of the event, and any photos or videos taken.

Final Report

42. A final report will be submitted to NMFS within 90 calendar days of the completion of the project summarizing the data recorded and submitted to AKR.section7@noaa.gov. The report will summarize all in-water activities associated with the proposed action, and results of PSO monitoring conducted during the in-water project activities.
43. The final report will include:
 - a. summaries of monitoring efforts, including dates and times of construction, dates

- and times of monitoring, dates and times and duration of shutdowns due to marine mammal presence;
- b. date and time of marine mammal observations, geographic coordinates of marine mammals at their closest approach to the project site, marine mammal species, numbers, age/size/gender categories (if determinable), and group sizes.
 - c. number of marine mammals observed (by species) during periods with and without project activities (and other variables that could affect detectability);
 - d. observed marine mammal behaviors and movement types versus project activity at time of observation;
 - e. numbers of marine mammal observations/individuals seen versus project activity at time of observation
 - f. distribution of marine mammals around the action area versus project activity at time of observation.
 - g. digital, queryable documents containing PSO observations and records, and digital, queryable reports.

Summary of Agency Contact Information

Table 2. Summary of agency contact information.

| Reason for Contact | Contact Information |
|---|---|
| Request S7 Consultation | AKR.PRD.Section7@noaa.gov |
| Consultation Questions & Unauthorized Take | Greg Balogh: greg.balogh@noaa.gov & Jenna Malek: jenna.malek@noaa.gov |
| Reports & Data Submittal | AKR.section7@noaa.gov (please include NMFS AKRO tracking number in subject line) |
| Stranded, Injured, Entangled, or Dead Marine Mammal (<i>not related to project activities</i>) | NOAA Fisheries Stranding Hotline (24/7 coverage) 877-925-7773 |
| Oil Spill & Hazardous Materials Response | U.S. Coast Guard National Response Center: 1-800-424-8802 & AKRNMFSspillResponse@noaa.gov |
| Illegal Activities (<i>not related to project activities; e.g., feeding, unauthorized harassment, or disturbance to marine mammals</i>) | NMFS Office of Law Enforcement (AK Hotline): 1-800-853-1964 |
| In the event that this contact information becomes obsolete | NMFS Anchorage Main Office: 907-271-5006 Or NMFS Juneau Main Office: 907-586-7236 |



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 6898
JBER, AK 99506-0898

October 24, 2022

Regulatory Division
POA-2007-00476

Mr. Jon Kurland
Regional Administrator for Protected Resources
National Marine Fisheries Service, Alaska Region
Post Office Box 21668
Juneau, Alaska 99802

Dear Mr. Kurland:

In accordance with Section 7(a)2 of the Endangered Species Act of 1973, as amended (ESA), the U.S. Army Corps of Engineers, Alaska District, Regulatory Division (Corps), requests initiation of informal consultation regarding a Department of the Army (DA) permit application submitted by Mr. Sever Paulson, on behalf of Kent Halverson with Hunter Bay Properties, file number POA-2007-00476, Hunter Bay, which should be referred to in all correspondence with us. In accordance with guidance provided in the Endangered Species Consultation Handbook, the Corps requests that you initiate consultation upon receipt of this request or provide a response within 30 days of receipt of this request stating what information is necessary to meet the requirements of 50 CFR §402.14(c). Upon your initiation of informal consultation, please provide this office with an expected completion date so that we may inform the applicant of the associated timeframes. The following information is provided in accordance with 50 CFR §402.14(c).

The applicant requests authorization to perform maintenance on a dock that was previously permitted with the U.S. Army Corps of Engineers. The proposed maintenance would include the removal of nine (9) 12.75-inch fiberglass fender piling with nine (9) galvanized steel pilings of the same size within Hunter Bay to repair damage to the pilings caused by a transient vessel. The new pilings would be installed within the existing footprint. A vibratory hammer would be the primary means of pile installation. Impact hammers may also be used if material is encountered that it is too dense to penetrate with a vibratory hammer. The work would be done from a barge and is anticipated to start between Spring and Summer of 2023.

All work would be performed in accordance with the enclosed plan (sheets 1-3), dated September 9, 2022. The proposed project is located within Latitude 54.8727° N., Longitude 132.3168° W.; near Ketchikan, Alaska.

The action area is defined in the ESA regulations (50 CFR 402.02) as the area within which all direct and indirect effects of the project will occur. The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur.

For this project, the action area includes the ensonified area within which project-related noise levels are greater than or equal to 120 dB rms re1 μ Pa or approaching ambient noise levels (i.e., the point where no measurable effect from the project would occur). According to NOAA Fisheries' "Technical Guidance for Assessing the Effects of Anthropogenic Noise on Marine Mammal Hearing" (July 2016), the Level B threshold for behavioral disturbance for continuous noise is 120 dB rms.

The Corps was unable to find any similar pile installation sound study from within Alaska, so this action area is based upon observed sound levels reported in "Technical Guidance for the Assessment of Hydroacoustic Effects of Pile Driving on Fish" (2020; Caltrans). For vibratory pile installation of 13-inch steel piles the Mad River Slough in Arcata, California observed sound levels measuring 155 dB rms at 10 meters from the sound source. Using the data in the Practical Spreading Model results in a shutdown zone of 2,154 meters.

Due to the project's location within Hunter Bay and the presence of other land masses the Corps has determined that the action area extends out from the proposed project's sound source up to 1.33 miles (2.15 kilometers), wherever possible as shown in Map 1.

Within the action area, the Mexico Distinct Population Segment (DPS) of humpback whales (*Megaptera novaeangliae*) occurs and given the timeframe of when pile driving would occur, it would be expected that humpback whales would be in the area.

Effects of the Action

Acoustic disturbance

Pile driving is the project's main source of loud underwater noise which can impact listed species by resulting in mortality (either directly from the noise, or indirectly from a reaction to the noise), injury, and disturbance ranging from severe (e.g., abandonment of vital habitat) to mild (e.g., startle response). Though the proposed pile driving would introduce loud continuous sounds into the water, the applicant has agreed to the enclosed list of minimization measures which would ensure no individuals of the listed species are exposed to noise levels above 120 dB. With the inclusion of these minimization measures, we do not expect that effects from pile driving could be meaningfully measured or detected, and therefore the effects are considered to be insignificant.

A secondary source of acoustic disturbance is from the barge that will be brought in for the project. This will be minimized by the barge traveling to/from the proposed project site once and keeping it in place until the project ends. Due to the short-term transit and presence in the action area, it is not expected that noise from the barge could be meaningfully measured or detected, and therefore the effects are considered to be insignificant.

Vessel Traffic

During construction time, a barge with the vibratory hammer and project supplies/equipment would be present in Hunter Bay. This barge would make a single trip to/from Hunter Bay from Ketchikan and would remain in place for the duration of the project. Although there is a potential that animals from the Mexico DPS humpback whale be found in the area foraging or moving through Hunter Bay and adjacent areas, it is considered that vessel traffic would be low and would occur at such low speeds that vessel disturbance to listed species is unlikely to occur. Additionally, the applicant agreed to follow the humpback whale approach regulations, which would ensure no impacts would occur to the listed species from vessel traffic. With the inclusion of the minimization measures and low speed of transit, vessel strike is considered unlikely to occur.

Habitat Alteration

Pile driving would briefly disturb the substrate and increase water turbidity temporarily due to the localized stir-up of sediments during pile installation. Suspended particles are expected to settle within a few hours to a point where their concentration in the water column would not be detectably different from surrounding waters. Sediments from dock construction are not likely to have detectable effects on listed mammal species.

Shutdown of project activities prior to the entry of a listed species into a shutdown zone would also decrease the likelihood of exposing listed species to localized turbidity generated during pile installation. Indirect effects to prey species due to sediment in the water would be minimal due to the short-term duration of the activity. It is expected that potential displacement of habitat for prey species would be temporary. Due to the temporary nature of turbidity impacts and the adherence to minimization measures, it is not expected that turbidity impacts to listed species could be meaningfully measured or detected, and therefore are considered to be insignificant.

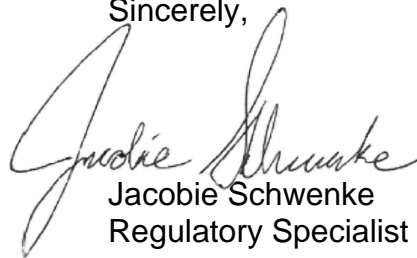
Effects to Prey Species

Noise generated from vibratory hammers can reduce the fitness and survival of fish in areas used by foraging marine mammals such as the Humpback Whale. During construction of the project, it is possible that elevated levels of underwater noise could cause injury to prey species during pile driving and drilling; however, pile driving would begin using a 30-minute ramp-up soft start procedure which would give many prey species in the immediate vicinity time to leave the area. It is anticipated that prey species will return to the project area following its completion. With the inclusion of the minimization measures and the temporary nature of the impacts to prey species, we do not expect impacts could be meaningfully measured or detected, and therefore are considered to be insignificant.

Based on the above analysis, we believe that with the incorporation of the proposed measures, the action may affect, but is not likely to adversely affect the Mexico DPS humpback whale. We request your concurrence with our determination.

Please contact me via email at Jacobie.Schwenke@usace.army.mil, by mail at the address above, by phone at (907) 753-5783, or toll free from within Alaska at (800) 478-2712, if you have questions. For additional information about our Regulatory Program, visit <http://www.poa.usace.army.mil/Missions/Regulatory>.

Sincerely,



Jacobie Schwenke
Regulatory Specialist

Enclosures

AKR PRD Mitigation Measures for U.S. Army Corps of Engineers Coastal Development Programmatic Informal Consultation

For all reporting that results from implementation of these mitigation measures, National Marine Fisheries Service (NMFS) will be contacted using the contact information specified in Table 2.

General Mitigation Measures

1. The agent, Sever Paulson, will inform NMFS of impending in-water activities a minimum of one week prior to the onset of those activities (email information to akr.section7@noaa.gov).
2. If construction activities will occur outside of the time window specified in this letter, the applicant will notify NMFS of the situation at least 60 days prior to the end of the specified time window to allow for reinitiation of consultation.
3. In-water work will be conducted at the lowest points of the tidal cycle feasible.
4. Consistent with AS 46.06.080, trash will be disposed of in accordance with state law. The project proponent will ensure that all closed loops (e.g., packing straps, rings, bands) will be cut prior to disposal. In addition, the project proponent will secure all ropes, nets, and other marine mammal entanglement hazards so they cannot enter public waterways.

Protected Species Observer (PSO)-related measures

The following pre-clearance and shutdown zone measures are the same for all in-water activities. Additional mitigation measures specific to each activity are listed in subsections below.

5. One or more PSOs will perform PSO duties onsite throughout Hunter Bay
6. At least one PSO on the project will complete PSO training prior to deployment (e.g., see <https://aisobservers.com/protected-species/new-protected-species-observer-training/>). The training will include:
 - a. field identification of marine mammals and marine mammal behavior;
 - b. ecological information on marine mammals and specifics on the ecology and management concerns of those marine mammals;
 - c. Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) regulations;
 - d. proper equipment use;
 - e. methodologies in marine mammal observation and data recording and proper reporting protocols; and
 - f. an overview of PSO roles and responsibilities.
7. For each in-water activity, PSOs will monitor all marine waters within the indicated shutdown zone radius for that activity (Table 1).

Table 1. Shutdown Zones for Each Activity.

| Activity | Zone Radius (m) |
|------------------------|-----------------|
| Vibratory Pile Driving | 2153 meters |

Please see mitigation measures listed in ESA Section 7 Consultation AKRO 2022-02590

8. PSOs will be positioned such that they will collectively be able to monitor the entirety of each activity's shutdown zone. The proponent will coordinate with NMFS on the placement of PSOs prior to commencing in-water work.
9. Prior to commencing pile driving PSOs will scan waters within the pile driving shutdown zone and confirm no listed species are within the shutdown zone for at least 30 minutes immediately prior to initiation of the in-water activity. If one or more listed species are observed within the shutdown zone, the in-water activity will not begin until the listed species exit the shutdown zone of their own accord or the shutdown zone has remained clear of listed species for 30 minutes immediately prior to pile driving.
10. The on-duty PSOs will continuously monitor the shutdown zone and adjacent waters during pile driving operations for the presence of listed species.
11. In-water activities will take place only:
 - a. between sunrise and sunset.
 - b. during conditions with a Beaufort Sea State of 4 or less, and
 - c. when the entire shutdown zone and adjacent waters are visible (e.g., monitoring effectiveness is not reduced due to rain, fog, snow, haze or other environmental/atmospheric conditions).
12. If visibility degrades such that a PSO can no longer ensure that the shutdown zone remains devoid of listed species during pile driving, the crew will cease in-water work until the entire shutdown zone is visible and the PSO has indicated that the zone has remained devoid of listed species for 30 minutes.
13. The PSO will order the pile driving activities to immediately cease if one or more listed species has entered or appears likely to enter, the associated shutdown zone.
14. If pile driving activities are shut down for less than 30 minutes due to the presence of listed species in the shutdown zone, pile driving may commence when the PSO provides assurance that listed species were observed exiting the shutdown zone. Otherwise, the activities may only commence after the PSO provides assurance that listed species have not been seen in the shutdown zone for 30 minutes (for cetaceans) or 15 minutes (for pinnipeds).
15. If a listed species is observed within a shutdown zone or is otherwise harassed, harmed, injured, or disturbed, PSOs will immediately report that occurrence to NMFS using the contact information specified in Table 2.

Protected Species Observer Requirements

16. PSOs will be someone other than the applicant and must have no other assigned tasks during monitoring periods.
17. At least one PSO will have prior experience performing the duties of a PSO during construction activity.
18. At least one PSO on the project will complete PSO training prior to deployment (e.g., see <https://aisobservers.com/protected-species/new-protected-species-observer-training/>). The training will include:
 - a. field identification of marine mammals and marine mammal behavior;

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Please see Mitigation Measures listed in

- b. ecological information on marine mammals and specifics on the ecology and management concerns of those marine mammals;
 - c. ESA and MMPA regulations;
 - d. proper equipment use;
 - e. methodologies in marine mammal observation and data recording and proper reporting protocols; and
 - f. an overview of PSO roles and responsibilities.
19. The applicant/permittee will provide resumes or qualifications of PSO candidates to the NMFS consultation biologist or section 7 coordinator for approval at least one week prior to in-water work. NMFS will provide a brief explanation of lack of approval in instances where an individual is not approved.
20. PSOs will:
- a. have the ability to effectively communicate orally, by radio and in person, with project personnel;
 - b. be able to collect field observations and record field data accurately and in accordance with project protocols and provide an understandable summary of those observations;
 - c. be able to identify protected species that occur in the action area at a distance equal to the outer edge of the shutdown zone;
21. PSOs will work in shifts lasting no longer than 4-hours with at least a 1-hour break from monitoring duties between shifts. PSOs will not perform PSO duties for more than 12-hours in a 24-hour period.
22. PSOs will have the ability to effectively communicate orally, by radio and in person, with project personnel to provide real-time information on listed species.
23. PSOs will have the ability and authority to order appropriate mitigation response, including shutdowns, to avoid takes of all listed species.
24. The PSOs will have the following equipment to address their duties:
- a. tools which enable them to accurately determine the position of a marine mammal in relationship to the shutdown zone;
 - b. two-way radio communication, or equivalent, with onsite project manager;
 - c. tide tables for the project area;
 - d. watch or chronometer;
 - e. binoculars (7x50 or higher magnification) with built-in rangefinder or reticles (rangefinder may be provided separately);
 - f. instruments that allow observer to estimate geographic coordinates of observed marine mammals
 - g. legible copy of this Letter of Concurrence and all appendices
 - h. legible and fillable observation record form allowing for required PSO data entry.

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25. Prior to commencing in-water work or at changes in watch, PSOs will establish a point of contact with the construction crew. The PSO will brief the point of contact as to the shutdown procedures if listed species are observed likely to enter or within the shutdown zone and will request that the point of contact instruct the crew to notify the PSO when a marine mammal is observed. If the point of contact goes "off shift" and delegates his duties, the PSO must be informed and brief the new point of contact.

AKR PRD Standard Mitigation Measures

Vibratory Pile Driving

26. If no listed species are observed within the vibratory pile driving shutdown zone for 30 minutes immediately prior to pile driving, vibratory pile driving may commence. This pre-pile driving observation period will take place at the start of each day's vibratory pile driving, each time pile driving has been shut down or delayed due the presence of a listed species, and following cessation of pile driving for a period of 30 minutes or longer.
27. Following a lapse of vibratory pile driving activities of more than 30 minutes, the PSO will authorize resumption of vibratory pile driving only after the PSO provides assurance that listed species have not been present in the shutdown zone for at least 30 minutes immediately prior to resumption of operations.

Protect-Dedicated Vessels

28. Vessel operators will:

- a. maintain a watch for marine mammals at all times while underway;
- b. stay at least 91 meters (100 yards) away from listed marine mammals, except they will remain at least 160 meters (500 yards) from endangered North Pacific right whales;
- c. travel at less than 5 knots (9 kilometers/hour) when within 274 meters (300 yards) of a whale;
- d. avoid changes in direction and speed when within 274 meters (300 yards) of a whale, unless doing so is necessary for maritime safety;
- e. not position vessel(s) in the path of a whale, and will not cut in front of a whale in a way or at a distance that causes the whale to change direction of travel or behavior (including breathing/surfacing pattern);
- f. check the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged;
- g. reduce vessel speed to 10 knots or less when weather conditions reduce visibility to 1.6 kilometers (1 mile) or less;

29. Adhere to the Alaska Humpback Whale Approach Regulations when vessels are transiting to and from the project site: (see 50 CFR §§ 216.18, 223.214, and 224.103(b)) (note: these regulations apply to all humpback whales). Specifically, pilot and crew will not:

- a. approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale), within 100 yards of any humpback whale;

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Please see mitigation measures listed in

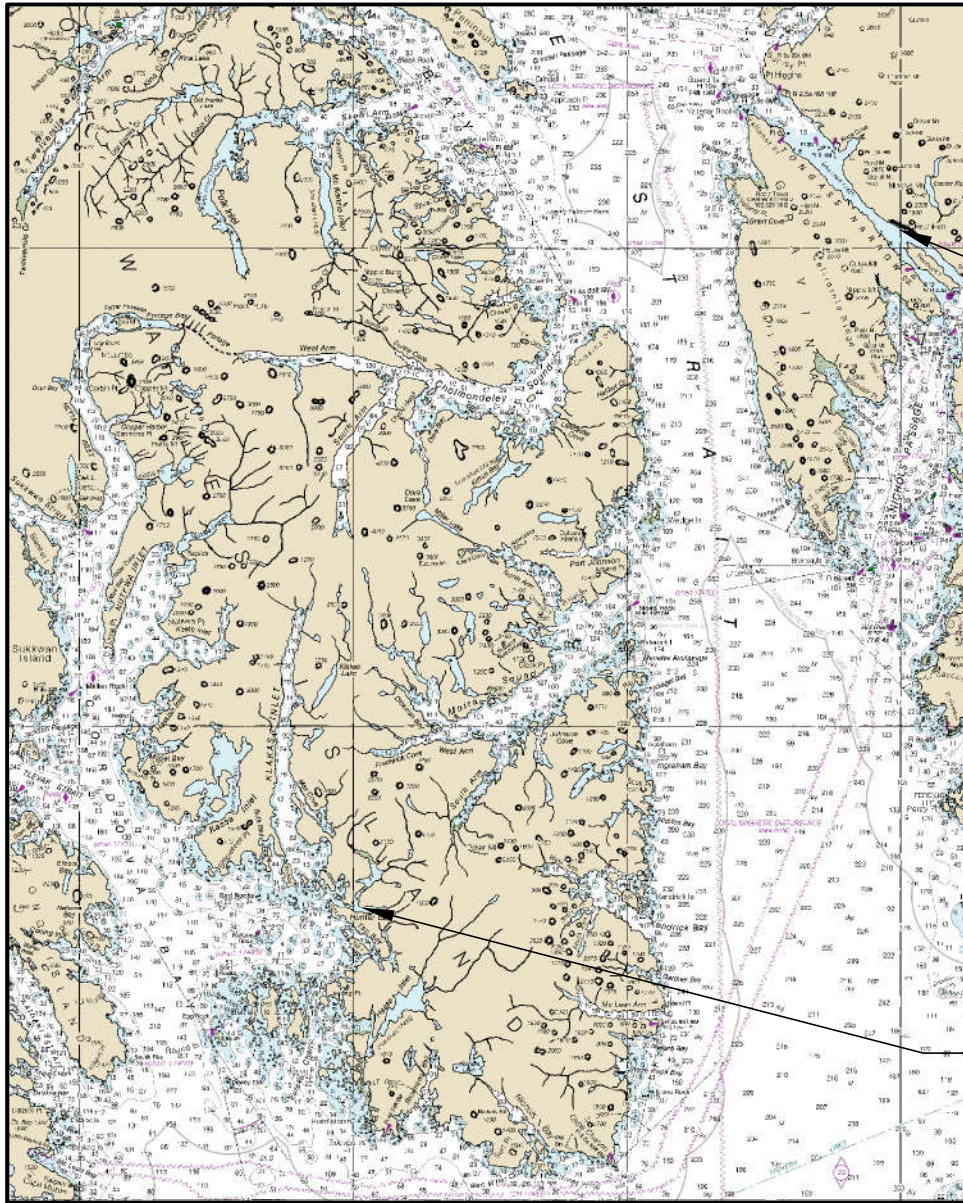
- b. cause a vessel or other object to approach within 100 yards of a humpback whale; or
 - c. disrupt the normal behavior or prior activity of a whale by any other act or omission.
30. If a whale's course and speed are such that it will likely cross in front of a vessel that is underway, or approach within 91 meters (100 yards) of the vessel, and if maritime conditions safely allow, the engine will be put in neutral and the whale will be allowed to pass beyond the vessel, except that vessels will remain 460 meters (500 yards) from North Pacific right whales.
31. Vessels will take reasonable steps to alert other vessels in the vicinity of whale(s).
32. Vessels will not allow lines to remain in the water unless both ends are under tension and affixed to vessels or gear. No materials capable of becoming entangled around marine mammals will be discarded into marine waters.

Summary of Agency Contact Information

Table 2. Summary of agency contact information.

| Reason for Contact | Contact Information |
|--|---|
| Consultation Questions & Unauthorized Take | Greg Balogh: greg.balogh@noaa.gov |
| Reports & Data Submittal | AKR.section7@noaa.gov (please include NMFS AKRO tracking number in subject line) |
| Stranded, Injured, or Dead Marine Mammal <i>(not related to project activities)</i> | Stranding Hotline (24/7 coverage) 1-877-925-7773 |
| Oil Spill & Hazardous Materials Response | U.S. Coast Guard National Response Center: 1-800-424-8802 & AKRNMFSSpillResponse@noaa.gov |
| Illegal Activities <i>(not related to project activities; e.g., feeding, unauthorized harassment, or disturbance to marine mammals)</i> | NMFS Office of Law Enforcement (AK Hotline): 1-800-853-1964 |
| In the event that this contact information becomes obsolete | NMFS Anchorage Main Office: 907-271-5006 Or NMFS Juneau Main Office: 907-586-7236 |

Please see mitigation measures listed in ESA Section 7 Consultation AKRO-2022-02590



KETCHIKAN

PROJECT LOCATION

NOTES:

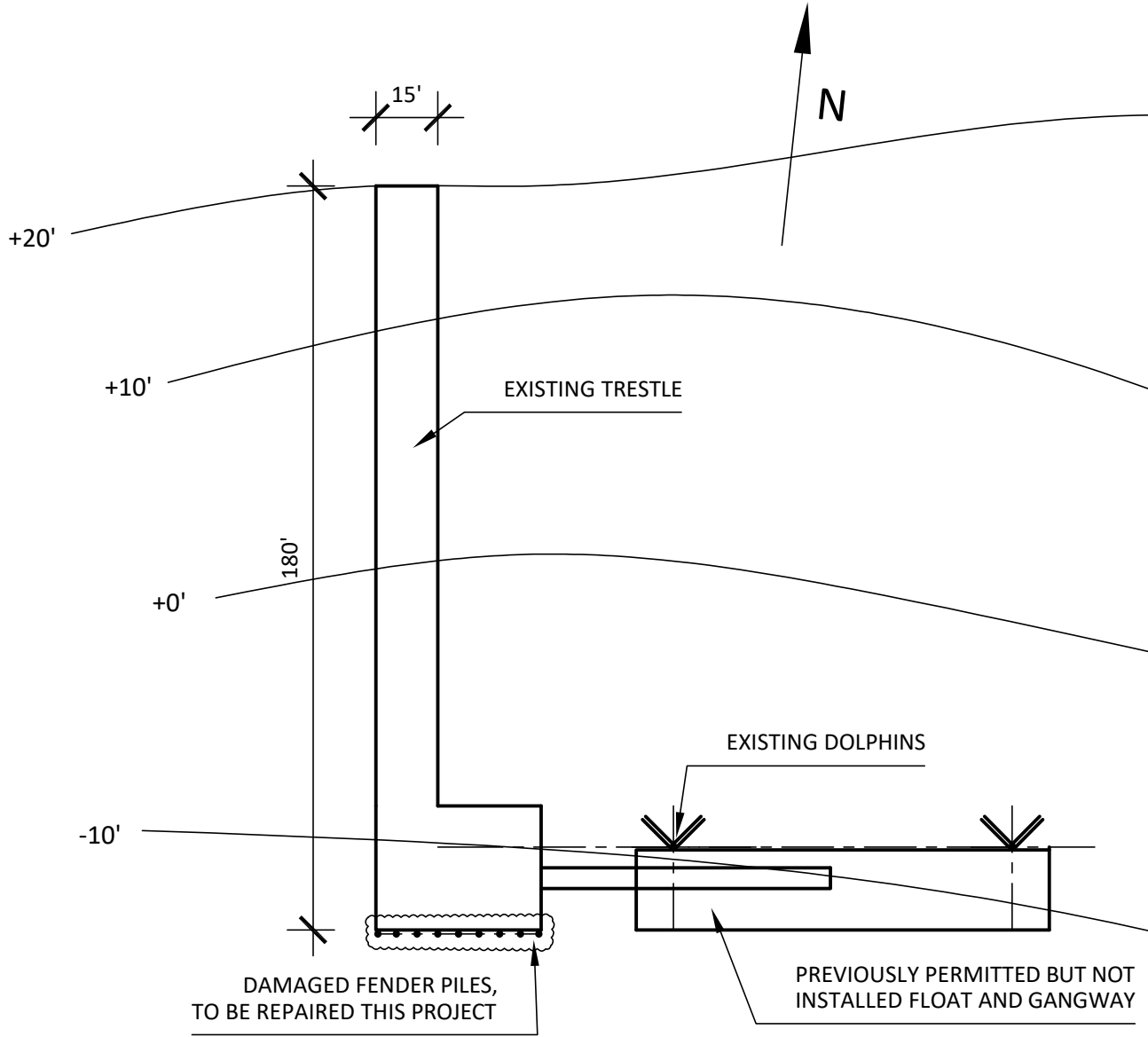
- DOCK LOCATION: 54.8727 N, -132.3169 W
- PROPERTY HAS AN EXISTING DOCK
- LOCATED APPROXIMATELY 45 MILES SOUTHWEST OF KETCHIKAN BY PLANE

PURPOSE: REPAIR PREVIOUSLY PERMITTED DOCK
 DATUM:
 ADJACENT PROPERTY OWNERS:
 1. UNKNOWN

VICINITY MAP

HUNTER BAY PROPERTIES
 PO BOX 8000
 KETCHIKAN, AK 99901

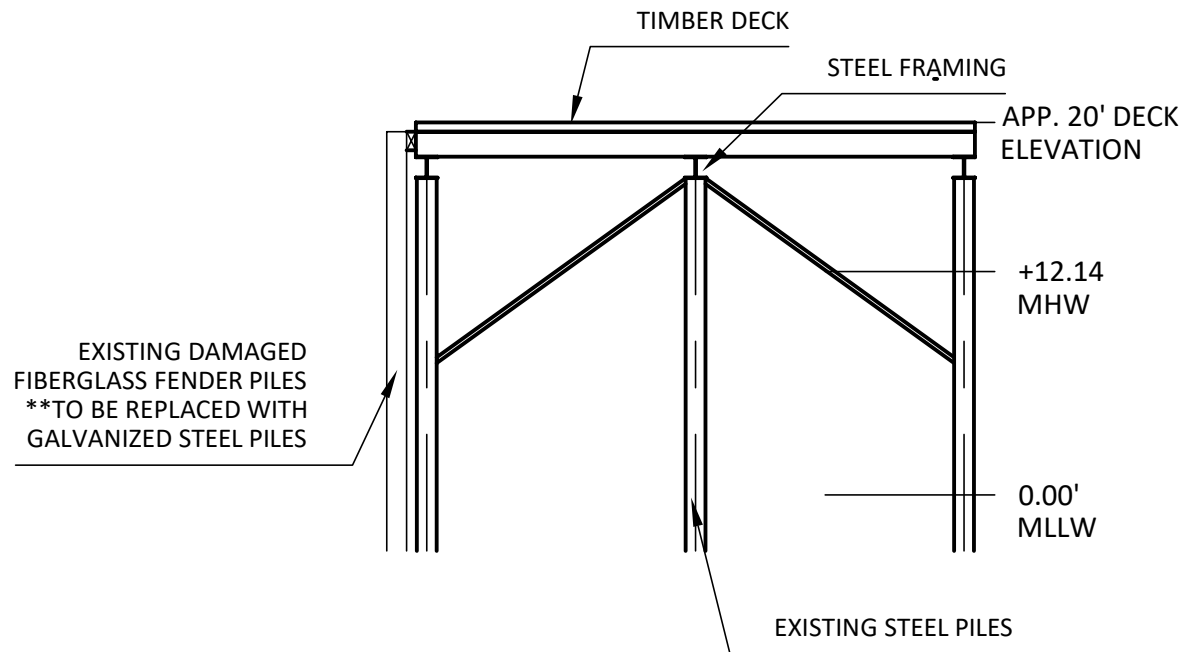
FILE NO.:
 WATERWAY: HUNTER BAY
 SEC: 6 T. 81S R. 88E M. CRM
 LAT: 54.8727° N
 LONG: -132.3169° W
 APPLICATION BY: SEVER PAULSON
 SHEET 1 OF 3 DATE 9.9.22



PURPOSE: REPAIR PREVIOUSLY PERMITTED DOCK
 DATUM:
 ADJACENT PROPERTY OWNERS:
 1. UNKNOWN

PLAN VIEW
 0 40 80
 1" = 40'
 HUNTER BAY PROPERTIES
 KETCHIKAN, AK 99901

FILE NO.:
 WATERWAY: HUNTER BAY
 SEC: 6 T. 81S R. 88E M. CRM
 LAT: 54.8727° N
 LONG: -132.3169° W
 APPLICATION BY: SEVER PAULSON
 SHEET 2 OF 3 DATE 9.9.22



PURPOSE: REPAIR PREVIOUSLY PERMITTED DOCK
 DATUM:
 ADJACENT PROPERTY OWNERS:
 1. UNKNOWN

SECTION VIEW
 0 10' 20'
 1" = 10'
 HUNTER BAY PROPERTIES
 KETCHIKAN, AK 99901

FILE NO.:
 WATERWAY: HUNTER BAY
 SEC: 6 T. 81S R. 88E M. CRM
 LAT: 54.8727° N
 LONG: -132.3169° W
 APPLICATION BY: SEVER PAULSON
 SHEET 3 OF 3 DATE 9.9.22

POA 2007-00476 Map 1

