

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF MARINE MAMMAL INCIDENTAL TAKE AUTHORIZATIONS TO THE
FRONT STREET MARINE TRANSLOAD FACILITY CONSTRUCTION IN NEWPORT, OREGON**

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

On April 22, 2015, Bergerson Construction, Inc. (Bergerson) submitted a request to the National Oceanic and Atmospheric Administration (NOAA) requesting an Incidental Harassment Authorization (IHA) for the possible harassment of small numbers of Pacific harbor seal (*Phoca vitulina richardii*) and California sea lion (*Zalophus californianus*) incidental to construction associated with the Front Street Marine Transload Facility in the city of Newport, Oregon, for a period of one year starting November 2015.

In response to Bergerson's request, the National Marine Fisheries Service (NMFS) proposed to issue an IHA, which would be valid from November 1, 2015, through October 31, 2016. Acoustic and visual stimuli associated with the in-water construction work have the potential to cause marine mammals in the vicinity of the project area to be behaviorally disturbed, and therefore, these activities warrant an authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). NMFS' IHA issuance criteria require that the taking of marine mammals authorized by an IHA 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, where applicable, 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.

In accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321 *et seq.*), NMFS has prepared this Final Environmental Assessment (EA) titled, "*Issuance of an Incidental Harassment Authorization for Front Street Marine Transload Facility Construction in Newport, Oregon*". NMFS proposes to issue the IHA with mitigation measures, as described in Alternative 1 of the Final EA.

ANALYSIS

NOAA Administrative Order (NAO) 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?

Response: The proposed action (i.e., issuing an IHA to Bergerson as described in Alternative 1 of the Final EA) cannot reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH). The footprint of the action area is very small in relation to fish habitat. The Front Street Transload Facility construction work would be conducted at the current location of the Undersea Garden. Therefore, no additional natural habitat would be affected.

The Front Street Transload Facility construction project would result in temporary disturbance to fish species in the close vicinity of the construction site, but the elevated sound pressure levels (SPLs) are not expected to reach sufficient magnitude to cause injury to fish from most of the construction activities since (1) attenuation devices would be used during all impact pile driving; (2) in-water piling activities would be restricted to November 1, 2015 to February 15, 2016, thus avoiding fish spawning season; and (3) most pile driving would be conducted by vibratory hammer.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The proposed action would not be expected to have a substantial impact on biodiversity and/or ecosystem functions in the vicinity of the proposed construction projects at Front Street Transload Facility because NMFS does not expect the issuance of an IHA to Bergerson to significantly (1) affect the susceptibility of any of the animals found in the vicinity of the project area to predation, (2) alter dietary preferences or foraging behavior, (3) change distribution or abundance of predators or prey, or (4) disturb the behaviors of marine mammals.

The impacts of the action on marine mammals are only related to disturbance of marine mammals from pile removal and pile driving noise. The construction noise levels would be minimized by using an air bubble curtain system for impact pile driving, and conducting most pile driving and all pile removal by vibratory hammer. NMFS considers the disturbances from construction noise to be localized and short-term. NMFS expects that these acoustic disturbances would not result in substantial impact to marine mammals or to their role in the ecosystem.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: The proposed action cannot reasonably be expected to have a substantial adverse impact on public health or safety because the authorized activity does not pose a risk to public health or human safety. The Front Street Transload Facility project is coastal construction work that is performed by construction crews in other project areas on a regular basis. All construction debris and demolishing materials would be shipped off site and would be disposed of properly.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: The proposed action cannot reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species because NMFS has made a determination that potential impacts from the proposed activities on marine mammals and other affected species range from negligible and minor to none. In addition, no

marine mammals listed under the Endangered Species Act (ESA) occur in the vicinity of the construction area.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: NMFS does not expect the issuance of an IHA to Bergerson to result in significant social or economic impacts interrelated with natural or physical environmental effects. Effects of the Front Street Transload Facility project would be limited to the localized harassment of the marine mammals authorized by the permits. Authorization of the proposed Front Street Transload Facility construction project could result in a low level of economic benefit to construction companies performing the work. However, such impacts would likely be negligible and on a regional or local level.

The activities authorized would not substantially impact use of the environment or use of natural or depletable resources, such as might be expected from large scale construction or resource extraction activities. Further, issuance of an IHA would not result in inequitable distributions of environmental burdens or access to environmental goods.

NMFS has determined that issuance of an IHA would not adversely affect low-income or minority populations since the IHA only authorizes take of marine mammals. There would be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses, as there are no subsistence uses that take place in the areas affected.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: The effects of issuing an IHA to Bergerson as described in Alternative 1 of the EA on the quality of the human environment are not likely to be highly controversial because: (1) there is no substantial dispute regarding the size, nature, or effect of the proposed action; (2) there is no known scientific controversy over the potential impacts of the proposed action; and (3) all comments received during the public comment period supported the issuance of the IHA.

To allow other agencies and the public the opportunity to review and comment on the actions, NMFS published a notice of receipt of the Bergerson application and proposed IHA in the *Federal Register* on August 13, 2015 (80 FR 48500). During the 30-day comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). The Commission recommends that NMFS issue the IHA to Bergerson, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: The proposed action cannot reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas because none of these are found in the project areas. Similarly, as described in the response to question 1 above, no substantial impacts to EFH, designated critical habitat (DCH) or ecologically critical areas are expected as the Front Street Transload Facility project would have a limited footprint. The natural processes in the environment are expected to fully recover from any impacts resulting from the construction activities.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: The action of issuing an IHA to Bergerson for the incidental take, by Level B harassment only, of small numbers of marine mammals is not expected to have significant effects on the human environment that would be unique or involve unknown risks because this type of construction work has been performed routinely.

While NMFS' judgments on impact thresholds for marine mammals in the vicinity of the project area are based on limited data, the risks are known and would involve the temporary, minimal harassment of marine mammals. No deaths or injuries to animals have been documented due to past coastal construction activities using both vibratory and impact hammers for pile driving and vibratory hammer for pile removal. The most common response to construction noise is for marine mammals to depart the construction area temporarily.

The construction activities associated with the Front Street Transload Facility project are well planned to minimize any impacts to the biological and physical environment of the areas by implementing mitigation and monitoring protocols that ensure the least practicable adverse impact on the affected species or stocks of marine mammals.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts. While the stocks of marine mammals to which the animals in the vicinity of the Front Street Transload Facility project site have the potential to be impacted by other human activities within inland waters in Oregon (i.e., coastal development) described in the cumulative impacts analysis in the EA, these activities are generally separated both geographically and temporally from the proposed actions in the project site and are not occurring simultaneously on the same individuals of the population within the action area.

The short-term stresses (separately and cumulatively when added to other stresses the marine mammals in the vicinity of Front Street Transload Facility project site face in the environment) resulting from the proposed construction work would be expected to be minimal. Thus, NMFS concluded that the impacts of issuing an IHA to Bergerson for the incidental take, by Level B harassment only, of small numbers of marine mammals are expected to be no more than minor and short-term.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources?

Response: The issuance of an IHA 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 or cause loss or destruction of significant scientific, cultural or historical resources either because such resources do not exist within the project area or are not expected to be adversely affected. In particular, the Front Street Transload Facility is not considered a significant scientific, cultural or historical resource, nor is it listed in the National Register of Historic Places.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: The issuance of an IHA cannot reasonably be expected to lead to the introduction or spread of any non-indigenous species into the environment because the activities associated with the proposed project would only be in-water construction and is limited to the area the construction activity is taking place.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: The issuance of an IHA is not expected to set a precedent for future actions with significant effects nor represent a decision in principle regarding future considerations. The issuance of an IHA to take marine mammals incidental to in-water construction activities in the coastal environment is a routine process under the MMPA. To ensure compliance with statutory and regulatory standards, NMFS' actions under section 101(a)(5)(D) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Issuance of an IHA to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize others to conduct similar activities. Subsequent requests for incidental take authorizations would be evaluated upon their own merits relative to the criteria established in the MMPA, ESA, and NMFS implementing regulations on a case-by-case basis.

The project has no unique aspects that would suggest it would be a precedent for any future actions. For these reasons, the issuance of an IHA to Bergerson to conduct the Front Street Transload Facility construction project would not be precedent setting.

13) Can the proposed action reasonably be expected to violate any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: The issuance of an IHA would not violate any federal, state, or local laws for environmental protection. Bergerson has fulfilled its responsibilities under MMPA for this action and the IHA currently contains language stating that the applicant is required to obtain any state and local permits necessary to carry out the action which would remain in effect upon issuance of the proposed amendment.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: The issuance of an IHA is not expected to result in any significant cumulative adverse effects that could have a substantial effect on target or non-target species because the minor and short-term stresses (separately and cumulatively when added to other stresses experienced by the marine mammals in the vicinity of the Front Street Transload Facility construction site) resulting from the Front Street Transload Facility project would be expected to be minimal.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Final EA prepared by NMFS, it is hereby determined that the issuance of an IHA for the take, by harassment,

of small numbers of marine mammals incidental to Bergerson's Front Street Transload Facility project in Newport, Oregon, will not significantly impact the quality of the human environment.

In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

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Date