



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

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MEMORANDUM FOR: The Record

FROM: Donna S. Wieting 
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SUBJECT: Adoption of the U.S. Navy Final Environmental
Assessment on *Waterfront Improvement Projects at
Portsmouth Naval Shipyard, Kittery, Maine*

I. Background

I.A. NMFS' Proposed Action

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), is proposing to issue an Incidental Harassment Authorization (IHA) to the United States Navy (Navy) pursuant to Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1371 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations [CFR] Part 216, Subpart I). The IHA would be valid from January 1, 2017 through December 31, 2017, and would authorize take, by Level A and Level B harassment, of marine mammals incidental to two waterfront improvement projects at Portsmouth Naval Shipyard (the Shipyard) in Kittery, Maine. Pier maintenance includes the removal of deteriorated timber piles and the installation of steel piles by vibratory pile driving.

NMFS' proposed action is a direct outcome of the Navy's IHA request (received on February 17, 2016) which involves the use of acoustic sources that have the potential to cause marine mammals in the vicinity of the waterfront improvement projects to suffer injury in the form of permanent threshold shift (PTS) and be behaviorally disturbed. Therefore, this action warrants an authorization from NMFS. NMFS' IHA issuance criteria require that the unintentional 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 the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such taking.



I.B. U.S. Navy's Proposed Action

As described in the Navy's final Environmental Assessment (EA), the proposed action would modernize and maximize dry dock capabilities for performing current and future missions efficiently and with maximum flexibility. The proposed action is needed to correct deficiencies in waterfront facilities and infrastructure and ensure that the Shipyard can continue to support its primary mission to service, maintain, and overhaul submarines. The proposed action would include the following two waterfront improvement projects: structural repairs to Berths 11, 12, and 13 and replacement of the Dry Dock 3 caisson. In-water construction is scheduled to begin in January 2017 and be completed by October 2022. This application is for the first year of in-water construction, from January 1, 2017 to December 31, 2017. No seasonal limitations would be imposed on the construction timeline. Construction schedules for in-water work at Berth 11 are under development and subject to change based on operational requirements. Therefore, this IHA application covers all in-water construction planned for Berth 11 structural repairs

Under the proposed action in-water construction activities include use of impact and vibratory hammers for pile extraction, driving, and drilling. Total driving time will be approximately 156 days which includes the installation of 327 piles and removal of 141 piles.

I.C. Comparison of U.S. Navy's Proposed Action to NMFS's Proposed Action

NMFS' proposed action (issuance of an IHA) would authorize take of marine mammals incidental to actions analyzed in the Navy's EA that are anticipated to result in the take of marine mammals including. These actions include pile installation and removal activities. Thus, these components of the Navy's proposed action are the subject of NMFS' proposed IHA. Other components of construction not expected to result in incidental take of marine mammals are not the subject of NMFS' proposed action. The Navy's EA contains a thorough analysis of the environmental consequences of their proposed action on the human environment, including specific sections addressing the effects of underwater sound on marine mammals and describing potential mitigation measures specific to marine mammals.

II. Alternatives and Impact Assessment

II.A. Summary of Alternatives Considered by the Navy

Alternative 1 (Preferred Alternative): The proposed action includes two waterfront projects, 1) structural repairs to Berths 11, 12, and 13, consisting of constructing king pile and concrete shutter panel bulkheads around these berths, and 2) replacement of the Dry Dock 3 caisson (or gate). The Preferred Alternative would incorporate in-water construction techniques for both projects and would require less pile driving, potentially reducing impacts on in-water resources, including marine mammals, fish, and benthic communities, and airborne noise impacts on communities near the Shipyard.

Alternative 2: This Alternative includes the same waterfront projects that would be implemented under Alternative 1. Under Alternative 2, conventional steel sheet-pile bulkheads would be constructed around Berths 11, 12, and 13. At Dry Dock 3, a temporary cofferdam would be constructed to provide a dry work area in order to allow more extensive repairs at this location. Alternative 2 would incorporate different in-water construction techniques for both projects that would require a greater number of piles and thus more pile driving than Alternative 1.

No Action Alternative: The No Action Alternative would not result in any changes to waterfront infrastructure at the Shipyard. The infrastructure and operational deficiencies described in Chapter 1 of the EA would not be addressed, with serious consequences to the Shipyard's ability to meet mission requirements. Because it would fail to support mission requirements, the No Action Alternative would not meet the purpose and need for the proposed action. However, as required by NEPA, the No Action Alternative is carried forward for analysis in the EA and provides a baseline for measuring the environmental consequences of the action alternatives.

II.B Summary of Alternatives Considered by NMFS

No-Action Alternative: For NMFS, denial of an MMPA authorization constitutes the NMFS No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny permit applications and to prescribe mitigation, monitoring and reporting with any authorizations. Under the NMFS No Action Alternative, there are two potential outcome scenarios. One is that the Navy activities occur in the absence of an MMPA authorization. In this case, (1) Navy would be in violation of the MMPA if takes occur; (2) mitigation, monitoring and reporting would not be prescribed by NMFS; and 3) mitigation measures might not be performed voluntarily by the applicant. Another outcome scenario is the Navy could choose to not proceed with their proposed activities.

By prescribing measures to minimize impacts to marine mammal species or stocks from incidental take through the authorization program, we can potentially lessen the impacts of these activities on the marine environment. While NMFS does not authorize the Navy's waterfront improvement project, NMFS does authorize the incidental take of marine mammals under its jurisdiction in connection with these activities and prescribes, where applicable, the methods of taking and other means of effecting the least practicable impact on the species and stocks and their habitats. Although the No Action Alternative would not meet the NMFS purpose and need to allow incidental takes of marine mammals under certain conditions, CEQ regulations require consideration and analysis of a No Action Alternative for the purposes of presenting a comparative analysis to the action alternatives.

Action Alternative: NMFS would issue an IHA authorizing take of marine mammals incidental to activities described in the Navy's Final EA, with the mitigation, monitoring and reporting measures presented in NMFS' proposed IHA (81 FR 51694).

II.C. Environmental Consequences

The EA analyzed the impacts to biological resources as well as impacts to air quality, water resources, bathymetry, cultural resources, visual resources, airborne noise, infrastructure, transportation, and hazardous materials and waste. Because potential impacts to them were considered to be negligible or nonexistent, the following resources were not evaluated in the EA: groundwater, topography, geology and soils, terrestrial biological resources, terrestrial threatened and endangered species, land use, potable water and wastewater, airspace, public health and safety, socioeconomics, and environmental justice.

The principal types of impacts during project construction would primarily be limited to include underwater noise (and its effects on marine biota) and turbidity. The expected impacts are not considered significant. The action alternative would be expected to result in noise levels that may affect marine mammals; these effects are expected to be limited to behavioral disturbance. NMFS' proposed action concerns only the potential effects to the biological component of the marine environment.

The anticipated impacts of the proposed action are primarily from increased levels of underwater sound resulting from pile installation and removal. The analysis in the EA indicated these impacts would be short term in nature (a maximum of 156 total days). Underwater sound associated with pile driving could have an effect on marine life in the vicinity of the shipyard. The EA concludes the impacts associated with the proposed action are minor and temporary and result in no significant impacts, including impacts on species listed under the Endangered Species Act (ESA). No marine mammals are anticipated to be exposed to sound levels resulting in serious injury or mortality during construction activities.

Recent and proposed projects at the Shipyard and other projects in the area were examined to determine possible cumulative impacts. All resource areas analyzed in the EA have been evaluated for cumulative impacts including past, present and reasonably foreseeable future actions. The analysis indicates that no significant cumulative impacts are anticipated because of the relative scale of projects and the nature and magnitude of specific impacts.

II.D. Public Involvement

NMFS' 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 Navy application and proposed IHA in the *Federal Register* on August 9, 2016 (81 FR 52614). The Navy's EA was also posted online with the publication of the proposed IHA. During the public comment period, NMFS received comments from the Marine Mammal Commission, which did not indicate that the environmental effects of NMFS' action were significantly controversial. The Commission recommended that NMFS (1) issue the requested incidental harassment authorization, subject to inclusion of the proposed mitigation,

monitoring, and reporting measures and (2) ensure that the Navy is sufficiently aware of the requirements set forth in each authorization. NMFS concurs with the recommendations and will provide a response in the *Federal Register*. In addition, NMFS would make the IHA and Navy's Final EA available on the internet at www.nmfs.noaa.gov/pr/permits/incidental/.

III. Mitigation Measures and Monitoring and Reporting Requirements

NMFS' issuance of the IHA is conditioned upon the implementation of mitigation and monitoring designed to reduce impacts to marine mammals to the level of least practicable impact. The IHA includes details about the mitigation measures and monitoring and reporting requirements summarized below.

III.A Mitigation

Time Restrictions: Pile driving/removal (vibratory as well as impact), drilling, and vibratory extraction will only be conducted during daylight hours.

Monitoring Zones and Shutdown: The Navy is required to establish shutdown disturbance zones corresponding with different intensities of effect (i.e., potential injury or behavioral harassment), in which visual observation of marine mammal presence would occur (see also Monitoring, below). These zones will include a shutdown zone, Level A harassment zone and Level B harassment zone.

Soft Start: The Navy is required to gradually initiate the sound from impact pile driving so that animals have the opportunity to leave the area before pile driving reaches full power.

III.B. Monitoring

Marine mammal observers (MMOs) meeting the minimum qualifications identified in the Navy's monitoring plan will observe the monitoring zones described above during pile driving activities. The observers will scan the waters within each monitoring zone using binoculars and visual observation and record occurrence of marine mammals in the shutdown and disturbance zones.

III.C. Reporting

The Navy will provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work or 60 days prior to any subsequent authorization, whichever is sooner.

IV. NMFS Review

The Office of Protected Resources (OPR) has reviewed the Navy's EA and concludes that the impacts evaluated by the Navy are substantially the same as the impacts of NMFS' proposed action to issue an IHA for the take of marine mammals. In particular, the EA contains an adequate evaluation of the direct, indirect and cumulative impacts on marine mammals and ESA- listed species. In addition, OPR has evaluated the Navy's EA

and determined the EA includes all required components for adoption by NOAA including:

- a brief discussion of the purpose and need for the proposed action;
- a listing of the alternatives to the proposed action;
- a description of the affected environment;
- a succinct description of the environmental impacts of the proposed action and alternatives, including cumulative impacts; and
- a listing of agencies and persons consulted and to whom copies of the Final EA are sent.

As a result of this review, the Office of Protected Resources has determined that the Navy's EA is complete and adequate to support NMFS' proposal to issue an IHA. It is therefore not necessary to prepare a separate EA or environmental impact statement to issue an IHA to the Navy and adoption of the EA is appropriate.

V. Conclusions and Findings

The Navy's EA and NMFS' FONSI support the finding that no significant environmental impacts will result from NMFS' proposed action to issue an IHA for the incidental take of marine mammals related to the Navy's pier maintenance activities. Based on the environmental review and supporting analysis, NMFS' OPR has adopted the Navy's EA under the CEQ Regulations for Implementing the National Environmental Policy Act (40 CFR 1506.3).