

**Finding of No Significant Impact  
on the Issuance of an Incidental Harassment Authorization to the United States  
Department of the Navy to Take Marine Mammals by Harassment Incidental to  
Waterfront Improvement Projects at the Portsmouth Naval Shipyard**

National Marine Fisheries Service

The National Marine Fisheries Service (NMFS) received an application from the United States Department of the Navy (Navy) requesting an Incidental Harassment Authorization (IHA) under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) for the taking of marine mammals incidental to waterfront improvement projects at the Portsmouth Naval Shipyard (Shipyard). The IHA will be valid from January 1, 2017 through December 31, 2017 and authorizes takes, by Level A and Level B harassment, of marine mammals incidental to pile driving and removal activities associated with conducting structural repairs to existing berths at the Shipyard.

NMFS' proposed action is a direct outcome of the Navy's request for an IHA for construction activities which involve pile installation and removal using impact and vibratory pile driving. This type of in-water construction activity has the potential to cause marine mammals in the vicinity of the project area to area experience injury or be behaviorally disturbed, therefore, qualifies for a permit from NMFS. NMFS' criteria for an IHA requires 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.

The issuance an IHA to the Navy allows the taking of marine mammals, consistent with provisions under MMPA, and is considered a major federal action under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). Therefore, we adopted the Navy's Environmental Assessment (EA) titled *Environmental Assessment for Waterfront Improvement Projects at Portsmouth Naval Shipyard, Kittery, Maine* and prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of the impacts associated with NMFS issuance of an IHA. The Final EA contains a thorough analysis of the environmental consequences of their proposed action on the human environment, including specific assessment of the effects of pile driving and underwater sound on marine mammals. NMFS reviewed the EA to ensure that the necessary information and analyses were included to support NMFS proposed action to issue an IHA. The preparation of this FONSI and adoption of the Navy's EA were completed in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR §1500-1508.

## Analysis

CEQ regulations at 40 CFR §1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below this section is relevant to making a finding of no significant impact. We have considered each criterion individually, as well as in combination with the others. We analyzed the significance of this action based on the 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?

**Response:** We do not expect that our action of issuing an IHA to the Navy or the Navy's proposed project would cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH). Pile driving could cause disruption or modification of benthic habitats or turbidity of the water quality. However, these impacts would be limited in time and space and reversible. The mitigation and monitoring measures required by the IHA would not affect habitat or EFH.

The action area near the Shipyard is within designated EFH for approximately seventeen species including Atlantic salmon (*Salmo Salar*), Atlantic Cod (*Gadus morhua*), Haddock (*Melanogrrammus aeglefinus*), bluefish (*Pomatomus saltarix*), and Atlantic Bluefin tuna (*Thunnus thynnus*). The proposed action may result in temporarily impaired water quality conditions and temporarily elevated noise levels within the action area during pile installation activities. The project will also result in a small amount of direct impacts to benthic and aquatic habitat at the site associated with pile footprints and new overwater structure. Pile installation activities could disturb sediments and temporarily increase turbidity within waterbodies that represent EFH for these species.

Effects on EFH by the project and issuance of the IHA assessed here would be temporary and minor. The main effect would be short-term disturbance that might lead to temporary and localized relocation of the EFH species or their food. The actual physical and chemical properties of the EFH will not be impacted. Therefore, NMFS, Office of Protected Resources, Permits and Conservation Division has determined that the issuance of an IHA for the taking of marine mammals incidental to the project will not have an adverse impact on EFH, and an EFH consultation is not required.

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:** We do not expect that our action of issuing an IHA to the Navy or the Navy's proposed project would have a substantial impact on biodiversity and/or ecosystem function within the affected environment. The proposed action may temporarily disturb EFH species and their prey due to increased turbidity associated with

pile driving. However, these impacts would be minor and temporary in nature.

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

**Response:** We do not expect that our action of issuing an IHA to the Navy or the Navy's proposed project would have a substantial adverse impact on public health or safety, as the taking, by harassment, of marine mammals would pose no human risk.

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:** We do not expect that our action of issuing an IHA to the Navy or the Navy's proposed project would have a substantial adverse impact on endangered or threatened species as none are known to occur near the project area.

The production of underwater sound via vibratory and impact pile driving as well as drilling during the proposed activities has the potential to affect marine mammals in a way that requires authorization under the MMPA. Both Level A and Level B harassment is likely. The activities and any required mitigation measures would not affect physical habitat features, such as substrates and water quality.

To reduce the potential for disturbance from the activities, the Navy will implement several monitoring and mitigation measures for marine mammals. Taking these measures into consideration, we expect that the responses of marine mammals from the Preferred Alternative would be limited to Level A harassment in the form of permanent threshold shift (PTS) and temporary displacement from the area and/or short-term behavioral changes, falling within the MMPA definition of "Level B harassment." We expect that harassment takes would be at the lowest level practicable due to the incorporation of the proposed mitigation measures.

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

**Response:** The proposed action will not have any social or environmental impacts. The impacts resulting from the authorization of marine mammal take incidental to the Navy's project will be limited to temporary behavioral harassment and permanent threshold shift (PTS) of small numbers of marine mammals. No social or economic impacts will be associated with this authorization.

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

**Response:** NMFS' issuance of an incidental harassment authorization (IHA) would not have effects on the human environment that are likely to be highly controversial. There is no substantial disagreement over the proposed action's size,

nature, or effect, nor is there such debate over the underlying action (the Navy's project). Due to the limited duration and intensity of the project, and the implementation of appropriate mitigation and monitoring measures, there will not be significant impacts to natural resources in the project area. During the public comment period on the proposed IHA, NMFS only received comments from the Marine Mammal Commission, which did not indicate that the environmental effects of NMFS' action were significantly controversial.

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:** Access to the Portsmouth Naval Shipyard, including the project site, is controlled by the Navy and is restricted to authorized military personnel, civilians, and contractors. Since no public recreational uses occur at the project site, the proposed action would have no direct impact to recreational uses or access in the surrounding community. Traditional resources would not be impacted. The project would occur in a shoreline area that already contains multiple built structures, and would not significantly degrade the existing environment. No other unique characteristics of the geographic area are known. NMFS' issuance of an IHA would not result in substantial impacts to any such places.

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

**Response:** The potential risks associated with small-scale marine construction projects and the associated pile driving activities are not unique or unknown, and there is not significant uncertainty about potential impacts. NMFS has issued numerous IHAs for similar activities or activities with similar types of marine mammal harassment and conducted NEPA analysis on those projects. Each IHA required marine mammal monitoring, and monitoring reports have been reviewed by NMFS to ensure that activities have a negligible impact on marine mammals. In no case have impacts to marine mammals, as determined from monitoring reports, exceeded NMFS' analysis under the MMPA and NEPA. Therefore, the effects on the human environment are not likely to be highly uncertain or involve unique or unknown risks.

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

**Response:** Issuance of an IHA for the Navy's proposed project is not related to other actions with individually insignificant but cumulatively significant impacts. We do not expect that the impacts would be cumulatively significant.

No future projects in the vicinity are known. However, any future Authorizations would have to undergo the same permitting process and would take the Navy's proposed project into consideration when addressing cumulative effects.

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 may cause loss or destruction of significant scientific, cultural or historical resources?

**Response:** We have determined that the issuance of an IHA to the Navy would not adversely affect entities 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. These types of sites are not located in or around the proposed project area. The proposed action is limited to the authorization to harass marine mammals consistent with the MMPA definition of Level A and Level B harassment.

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 to the Navy is not expected to result in the introduction or spread of non-indigenous species into the human environment, as equipment that could cause such effects are not proposed for use. Moreover, the IHA does not mandate marine transits outside of the local area or have any relation to bilge water or other potential causes of the introduction or spread of a non-indigenous species.

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

**Response:** Our proposed action of issuing an IHA would not set a precedent for future actions with significant effects or represent a decision in principle. Each MMPA authorization applied for under 101(a)(5)(D) must contain information identified in our implementing regulations. We consider each activity specified in an application separately and, if we issue an IHA to an applicant, we must determine that the impacts from the specified activity would result in a negligible impact to the affected species or stocks and would not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. Our issuance of an IHA may inform the environmental review for future projects, but would not establish a precedent or represent a decision in principle about a future consideration.

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

**Response:** The issuance of an IHA would not result in any violation of federal, state, or local laws for environmental protection. The applicant is required to obtain any additional federal, state and local permits necessary to carry out the proposed activities.

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?

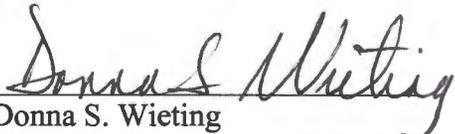
**Response:** The proposed action allows for the taking, by incidental harassment, of marine mammals during the Navy's waterfront improvement project. We have determined that marine mammals may exhibit behavioral changes or incur temporary displacement from the action area. However, we do not expect the authorized harassment to result in significant cumulative adverse effects on the affected species or stocks. We do not expect that the issuance of an IHA would result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to human presence.

Cumulative effects refer to the impacts on the environment that result from a combination of past, existing, and reasonably foreseeable human activities and natural processes. NMFS examined several activities for potential cumulative effects including climate change, coastal development, marine pollution, disease, and whale watching. Because of the relatively small area of potential disturbance and the temporary nature of the potential disturbance or displacement along with the corresponding mitigation measures, the action would not result in synergistic or cumulative adverse effects that could have a substantial effect on any species.

Implementation of the proposed action, in conjunction with other past, present, and reasonably foreseeable future actions, would not be expected to result in significant cumulative impacts to the environment. As such, the proposed action will not result in cumulative adverse effects that could have a substantial effect on species in the action area.

#### **DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting EA prepared by the Navy and the application for an IHA, it is hereby determined that NMFS' issuance of an IHA would not significantly impact the quality of the human environment as described above and in the supporting documents. The proposed IHA was published in the *Federal Register*, and all public comments were considered and addressed. These public comments presented no new information that affects this determination. In addition, all beneficial and adverse impacts of the proposed 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