

FINDING OF NO SIGNIFICANT IMPACT

FOR THE PROPOSED ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION TO THE US ARMY CORPS OF ENGINEERS TO TAKE MARINE MAMMALS INCIDENTAL TO CONDUCTING PILE INSTALLATION AND REMOVAL ACTIVITIES

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Marine Fisheries Service (NMFS), a division of the National Oceanic Atmospheric Administration (NOAA), is proposing to issue an Incidental Harassment Authorization (IHA) to the U.S. Army Corps of Engineers, Portland District (Corps) pursuant to 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). This IHA will be valid from May 1, 2016 through April 30, 2017 and authorizes takes, by Level B harassment, of marine mammals incidental to the rehabilitation activities (pile installation and removal only) for Jetty A at the mouth of the Columbia River (MCR) located in Pacific County, Washington.

The proposed action for NMFS is a direct outcome of the Corps IHA request which involves pile installation and removal activities for Jetty A. This type of in-water construction activity has the potential to cause marine mammals in the vicinity of the project area to be behaviorally disturbed requiring a permit from NMFS. NMFS IHA issuance criteria requires that the taking of marine mammals 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 of an Authorization would allow for 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.*). This Finding of No Significant Impact (FONSI) evaluates the significance of the impacts of our selected alternative—Alternative 1 (Preferred Alternative) and are adopting the Corp’s Final Revised Environmental Assessment “*Columbia River at the Mouth, Oregon and Washington Rehabilitation of the Jetty System at the Mouth of the Columbia River*”. The preparation of this FONSI and adoption of the Corp’s Final Revised EA were completed in accordance with NEPA, the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508, and NOAA Administrative Order (NAO) 216-6 “*Environmental Review Procedures for Implementing the National Environmental Policy Act*”. Based on the Corps Final Revised EA and their IHA application, NMFS’s proposed action and alternatives include:

- Alternative 1(Proposed Action/Preferred Alternative). Issue an IHA to the Corps for Level B harassment of marine mammals for proposed pile installation and removal of some piles at Jetty A only, taking into account the prescribed means of take, mitigation measures, and monitoring requirements required in the proposed IHA.
- No Action Alternative. Do not issue an IHA to the Corps, in which case, for the purposes of this FONSI, NMFS assumes that the Corps would forego the proposed pile installation and removal of some piles at Jetty A.

ANALYSIS

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the 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 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: We do not expect that our action of issuing an Authorization to the Corps or the Corps’ proposed project would cause substantial damage to the ocean and coastal habitats and/or essential fish habitat. 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 Authorization would not affect habitat or essential fish habitat (EFH).

EFH has been identified in the waters surrounding Jetty A. Effects on EFH by the project and issuance of the Authorization 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 species for which EFH has been designated or their food. The actual physical and chemical properties of the EFH would not be impacted. Therefore, NMFS, Office of Protected Resources, Permits and Conservation Division has determined that the issuance of an Authorization for the taking of marine mammals incidental to the project would 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 Authorization to the Corps or the Corps’ proposed project would have a substantial impact on biodiversity and/or ecosystem function within the affected environment. The proposed action may temporarily disturb species for which EFH has been designated and their prey due to increased turbidity associated with pile driving. Marine mammals in the proposed action areas would also be affected by Level B harassment. However, any impacts would be short-term and localized.

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 Authorization to the Corps or the Corps' 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 have determined that our issuance of an Authorization for incidental take from the Corps' proposed project would likely result in some Level B harassment (in the form of short-term and localized changes in behavior and displacement) of small numbers, relative to the population sizes, of six species of marine mammals: humpback whale, Steller sea lion, harbor seal, gray whale, harbor porpoise, killer whale.

The Corps has applied for incidental harassment authorization for the incidental take of the following marine mammals that are listed as endangered under the ESA under our jurisdiction: humpback whale and Steller sea lion (Western DPS). Under section 7 of the ESA, the U.S. Army Corp of Engineers and NMFS Office of Protected Resources (OPR), have conducted a joint formal consultation with the National Marine Fisheries Service, Alaska Regional Office, on this proposed Project. NMFS issued a Biological Opinion which concluded that the proposed action is not likely to jeopardize the continued existence of humpback whales or the western DPS of Steller sea lions, or destroy or adversely modify designated critical habitat.

The EA evaluates the affected environment as it relates to marine mammals and their habitat as well as potential effects of the proposed issuance of an IHA on those aspects of the environment, indicating that only the production of underwater sound via vibratory pile driving during the proposed activities has the potential to affect marine mammals in a way that requires authorization under the MMPA. 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 Corps will implement several monitoring and mitigation measures for marine mammals, which are outlined in the EA. Taking these measures into consideration, we expect that the responses of marine mammals from the Preferred Alternative would be limited to temporary displacement from the area and/or short-term behavioral changes, falling within the MMPA definition of "Level B harassment." We do not anticipate that take by injury (Level A harassment), serious injury, or mortality would occur, nor would we authorize take by injury, serious injury, or mortality. 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: We expect that the primary impacts to the natural and physical environment would be temporary in nature (and not significant) and not interrelated with significant social or

economic impacts. Issuance of an Authorization or the Corps activity would not result in inequitable distributions of environmental burdens or access to environmental goods.

We have determined that issuance of the Authorization would not adversely affect low-income or a minority population, as our action only affects marine mammals. Further, 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 such uses of marine mammals in the proposed action area. Therefore, we expect that no significant social or economic effects would result from our issuance of an Authorization or the Corps' proposed project.

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

Response: The effects of issuing an IHA to the Corps 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 this 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 Corps application and proposed IHA in the *Federal Register* on July 23, 2015 (80 FR 43739). During the public comment period, NMFS received a letter from the Marine Mammal Commission. The Commission recommended that a hydroacoustic monitoring plan be incorporated in subsequent years of activity under requested regulations, if and when issued. The Commission believes such a plan is prudent due to the types and sizes of piles to be installed and removed, the substrate of the environment, and the ambient sound and sound propagation loss associated with a river mouth opening into the open ocean.

NMFS agrees that a hydroacoustic monitoring plan would be valuable for defining potential injury and harassment zones during future years of the jetty rehabilitation project. There is very limited hydroacoustic data pertaining to the MCR. NMFS will work with the applicant to devise a monitoring plan during the next application cycle

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: Issuance of the Authorization or the Corps' proposed project are not 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 as it would only authorize harassment to marine mammals. The action area does not contain, and is not adjacent to, areas of notable visual, scenic, historic, or aesthetic resources that would be substantially impacted. Moreover, the issuance of the Authorization would not impact EFH. (See responses to questions 1 and 2.)

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 vibratory and impact pile driving are not unique or unknown, nor is there significant uncertainty about impacts. NMFS has issued Authorizations for similar activities or activities with similar types of marine mammal harassment and conducted NEPA analysis on those projects. Each Authorization 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 Authorization to the Corps or the Corps' 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 Corp'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 Authorization to the Corps or the Corps' proposed project 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 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 Authorization to the Corps or the Corps' proposed project is not expected to result in the introduction or spread of a non-indigenous species into the human environment, as equipment that could cause such effects are not proposed for use. Moreover, the Authorization 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 does it represent a decision in principle about a future consideration?

Response: Our proposed action of issuing an Authorization would not set a precedent for future actions with significant effects or represent a decision in principle about a future consideration. 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 Authorization 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 Authorization 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 any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: The issuance of an Authorization 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: 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. The proposed action allows for the taking, by incidental harassment, of marine mammals during the rehabilitation of Jetty A at MCR. 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 Authorization would result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to human presence.

The proposed project does not target any marine species, and we do not expect it to result in any individual, long-term, or cumulative adverse effects on the species incidentally taken by harassment due to these activities. The potential temporary behavioral disturbance and/or displacement of marine species might result in short-term behavioral effects for these marine species within the disturbed areas, but we expect no long-term displacement of marine mammals as a result of the proposed action conducted under the requirements of the Authorization. Thus, we do not expect any cumulative adverse effects on any species as a result of our action

The Corps concluded in its EA that there would be no cumulatively significant, adverse effects on any biological resources. In addition, the Corps determined that there are a number of actions that are ongoing or planned that would provide a cumulative, long-term improvement to aquatic and wildlife resources and habitat.

DETERMINATION

In view of the information presented in this document and the analysis contained in the Corps' Final Revised EA titled "*Columbia River at the Mouth, Oregon and Washington Rehabilitation of the Jetty System at the Mouth of the Columbia River*", and documents that it references, we have determined that issuance of Authorization to the Corps in accordance with Alternative 1 (Preferred Alternative) would not significantly impact the quality of the human environment. In addition, we have addressed all beneficial and adverse impacts of the action to reach the conclusion of no significant impacts. Accordingly, the preparation of an Environmental Impact Statement for this action is not necessary.

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Date