Finding of No Significant Impact Issuance of an Incidental Harassment Authorization to the Port of Anchorage and Department of Transportation Maritime Administration

National Marine Fisheries Service

On February 20, 2008, the National Marine Fisheries Service (NMFS) received a complete application from the Port of Anchorage (herein after "Port") and the U.S. Department of Transportation Maritime Administration (herein after "MARAD") requesting authorization for the taking of marine mammals incidental to Phase II of the Port's Marine Terminal Redevelopment Project (herein after "Project"), Anchorage, Alaska. The Port and MARAD requested a one-year Incidental Harassment Authorization (IHA) under Marine Mammal Protection Act (MMPA) Section 101(a)(5)(D) beginning in the 2008 construction year, and also requested subsequent rulemaking and issuance of Letters of Authorization (LOAs) for the year 2009 through 2012.

The Port's expansion and redevelopment activities include one action that may result in the harassment to marine mammals; in-water pile driving. Dredging would not result in harassment to marine mammals as this activity has been occurring around the Port since it was first erected and the whales have become habituated to such activity. Fill compaction also would not result in harassment as the use of the vibratory driver would be low energy and sound propagation would be further reduced by sound absorption of fill and the sheet pile wall. However, because marine mammals may be harassed by underwater sound emitted during in-water pile-driving activities, an IHA under the MMPA is warranted and regulations and LOAs are an available mechanism to address harassment over multiple years. In accordance with the MMPA, the Secretary shall allow the incidental taking of marine mammals if the Secretary finds that the total of such taking will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The Secretary is further required to prescribe the permissible methods of taking and means of effecting the least practicable adverse impact on the species or stock and its habitat (i.e., mitigation) and to set forth requirements pertaining to monitoring and reporting such taking. NMFS is proposing to issue an IHA that will govern the requested take of marine mammals for a period of one year beginning in 2008; NMFS prepared an Environmental Assessment analyzing the proposed action of IHA issuance and subsequent promulgation of regulations. The decision here is specific to the issuance of the IHA and it is possible that the future consideration of regulations may be supported by a supplement to the current EA. If so, that supplement shall provide analysis and consideration of monitoring and reporting feedback required by the IHA. This FONSI is supported by the analysis provided in the EA for the proposed action completed by NMFS in July 2008.

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) 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 below 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?

Response: The Project, undertaken by the Port and MARAD, requires impact and vibratory pile driving which may result in harassment to marine mammals. The actual authorization to harass marine mammals (via an IHA) would not cause damage to ocean or coastal habitat or essential fish habitat (EFH). However, NMFS must consider the impacts of the Project despite not authorizing actual construction. The Project design plan calls for 135 acres of inter- and subtidal wetlands to be filled which would eliminate such habitat. In addition, noise emitted from pile driving would result in habitat degradation. While elimination of the habitat can not be mitigated, noise exposure can be. As described in the EA, the Port is required to follow numerous mitigation measures, as outlined in permits already issued by other agencies, to minimize habitat damage. For example, fill will consist of clean sand, gravel, or stone, and the Port must adhere to Best Management Practices (BMPs) and special procedures set forth in the bid package, in addition to complying with the laws and regulations governing placement of fill material and the protocol to be followed when contamination is encountered at source sites. Construction contractors are required, under U.S. Army Corps of Engineers (USACE) Permit POA-2003-502-N, to identify and implement BMPs to prevent and control erosion and sedimentation during construction and operation; protect adjacent properties and watercourses from effects related to erosion, sedimentation, and flooding; control spills; and handle potentially hazardous materials and waste in accordance with federal, state, and local requirements. Construction activities will be monitored to verify proper implementation of BMPs and construction contractors will be required to provide certification that fill materials imported from commercial sources have been tested to document that the materials are free of contamination prior to being used on the Project. The Port is also required to abide by all Clean Water Act and Alaska's Coastal Zone Management Program laws and regulations.

The Port is also required, under their USACE Permit, to conduct a feasibility study to identify the most practicable and beneficial aquatic habitat restoration enhancement, creation, and preservation projects and to set up a mitigation fund to finance such projects. Prior to the allocation of these funds, mitigation projects will be prioritized in accordance to their overall ability to offset aquatic function losses of the Project and their respective cost/benefit or cost/credit ratio. Areas of potential restoration include, but are not limited to, Chester Creek, Six Mile Creek, and the Lower Ship Creek watershed. Such restoration projects could include estuary enhancement and expansion, dam removal and or fish/passage modifications, conservation easements, and riparian buffering. All potential projects would be reviewed and considered by an advisory panel consisting of representatives from the Alaska Department of Natural Resources, U.S. Fish

and Wildlife, Environmental Protection Agency, NMFS Alaska Region, USACE, Municipality of Anchorage, and the Department of the Air Force, 3 CES/CEVP. Use of these mitigation funds would benefit fish and other biota in areas that currently may be unsuitable for inhabitance, offsetting some loss of the area to be filled. Therefore, while the portion wetlands filled would be irretrievably lost, all habitat modification and degradation would be conducted under strict mitigation that would offset habitat loss and not cause substantial damage to the overall coastal habitat around the Port.

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 Port's expansion project would have a localized adverse impact on biodiversity and ecosystem function in the area that is to be filled as this habitat would be eliminated. However, the overall biodiversity and ecosystem function in the area surrounding the expanded Port and Knik Arm is not expected to be substantially impacted. As described in the EA, biotic sampling and physical modeling were carried out prior to initiating Port construction. Sampling was conducted to enumerate fish and benthic species around the Port. These studies revealed that juvenile fish diet consisted primarily of zooplanktonic crustaceans and insect as well as polycheates. The investigators theorized that the extreme turbidity and poor visibility in the Arm likely severely limits the success of visual feeding by fish but visual feeding may be possible in microhabitats within the surface water in the Arm where short periods (minutes) of relative quiescence in the generally turbulent water allow partial clearing. From observations, it appears that these areas can occur along shorelines as well as in the middle of the Arm. Therefore, while ecosystem function would be eliminated in areas already filled and to be filled, other parts of Knik Arm can provide waters and habitat suitable for feeding and productivity. Models were also created to forecast changes in hydrological characteristics (e.g., current speed and direction) which could potential alter distribution of smolt and fish. Upon completion of the new terminal, current speed and direction would not be changed to the extent that would alter fish distribution. Based on these studies and models, NMFS has determined that biodiversity and ecosystem function would not be altered such that the habitat is changed substantially.

NMFS proposed action, issuance of an IHA, would solely authorize Level B harassment of marine mammals. The harassment incidents are expected to have only a temporary impact on small numbers of marine mammals in the vicinity of pile driving activities. The habitat use of the affected area by beluga whales is primarily travel although bouts of feeding or suspected feeding have been observed. Overall, beluga whales' prime feeding habitats are north of the Port, beginning in Eagle Bay and extending northward with the incoming tide. These areas are outside of distances where sound from pile driving would propagate. As described in the EA, the disturbance of marine mammals would not be expected to impact their feeding or predator-prey relationships or result in other indirect effects on other marine resources in the vicinity of the activity. Therefore, NMFS' proposed action authorizing Level B harassment for the

first year of in-water pile driving would not be expected to result in ecosystem level or biodiversity impacts.

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

Response: The expansion of the Port is not expected to have a substantial impact on public health or safety. The Port has conducted numerous studies and has implemented appropriate conditions to ensure that air and water quality are not adversely affected from Port expansion. The Port and MARAD EA examined the possible impacts pertaining to 16 resource categories including those related to the public. These are: air quality; noise and vibration; hazardous materials and waste; safety; land use and coastal zone consistency; recreation and visual resources; transportation; 4(f)/106 resources; and public services and utilities. As described in the FONSI for that EA, the Port determined that construction associated with the Project would result in an increase in air emissions and noise levels; however, criteria pollutant emissions would not exceed de minimus levels and noise in nearby residential areas would not exceed Federal or municipality regulated levels. Therefore, the Port's expansion project is not expected to have substantial adverse impact on public health and safety. NMFS' action authorizing incidental harassment of marine mammals would not result public safety impacts or concerns.

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: Marine mammals and other taxa (e.g., fish), would be adversely affected by the Project. NMFS issuance of a one-year IHA would allow the Port to incidentally take, by Level B harassment only, small numbers of marine mammals, specifically 34 beluga whales (Delphinapterus leucas), 20 harbor porpoise (Phocoena phocoena), 20 killer whales (Orcinus orca), and 20 harbor seals (Phoca vitulina). Takes would occur from impact and vibratory pile driving as these activities would expose marine mammals in the area to sound levels above NMFS current harassment thresholds (i.e., 160 dB re 1 μ Pa for impact and 120dB re 1μPa for vibratory pile driving). The Port would not be authorized to take marine mammals by Level A harassment (constituted by received sound levels at or above 180/190dB for cetaceans and pinnipeds, respectively). The expected reactions of marine mammals to loud sound (e.g., avoidance) and mitigation measures (e.g. establishment of safety zones) would eliminate the chance of injury to any marine mammal. No endangered or threatened species or designated critical habitats are located within or near the Project location and therefore would not be affected. However, Cook Inlet beluga whales have been proposed for listing as an endangered species (72 FR 19854, April 20, 2007).

The USACE has imposed mitigation in Permit POA-2003-502-N so that habitat degradation would be limited during crucial fish spawning times. As stated in that permit, the Port shall cease all in-water fill placement and pile driving activities within a one week period following smolt releases from the Ship Creek hatchery (a stocked creek

2000 ft. south of the terminal redevelopment project footprint) and the final design plan shall, where possible, incorporate end-of-phase construction joints that provide refuge for salmonids in the non-structural voids. In addition, as described in response to question 1, a compensatory mitigation fund has been established by the Port to compensate for resource losses to the human and aquatic environment. This, along with adherence to BMPs as described in the EA and response to question 1, is expected to compensate for direct habitat loss of filled wetlands. Therefore, NMFS concludes that the Project will have not had a significant impact on fish populations in Knik Arm.

Noise from pile driving is expected to result in mild to moderate short-term behavioral changes and some mild physiological stress response to marine mammals. As described in the EA, NMFS expects the following behavioral reactions: altered headings, fast swimming, changes in dive, surfacing, respiration, and feeding patterns, and changes in vocalizations. In addition, stress hormones such as norepinephrine, epinephrine, and dopamine, may increase upon initial exposures to construction noise. However, as analyzed in detail in the supporting EA, NMFS believes that the following baseline factors make impacts less severe and there is the possibility that pile driving will result in less than anticipated behavioral reactions: (1) Knik Arm is already a noisy environment due to tide and current vessel traffic and marine mammals have become accustomed to these background sound levels; (2) habitat use around the Port by beluga whales is primarily travel and they have been sighted using man made structures to facilitate prey capture when opportunistic foraging occurs; therefore, vital feeding behavior would not likely be interrupted; (3) beluga whale possess an ability to compensate for masking; (3) beluga whale have habituated to present-day conditions of the environment (e.g., belugas are seen interacting with large, slow moving vessels); and (4) other marine mammals species presence is scarce in the area. In addition, the Port must comply with numerous mitigation measures outlined in the IHA. These mitigation measures, such as safety zones, shut down of impact pile driving around low tide (a time belugas use this habitat the most), and "soft-starts", would ensure that exposure to pile driving sounds would be minimized. A full list of mitigation measures can be found in Chapter 4 of the EA. Due to the aforementioned reasons, NMFS believes that adverse effects to marine mammals would not exceed those which would result in more than a negligible impact to marine mammals.

NMFS conservatively estimates that 34 Cook Inlet beluga whales could be exposed to sound levels that may be considered harassment during the duration of the of the one-year IHA. The Port conducted three years of pre-construction beluga whale monitoring studies based on recommendations from NMFS. Based on density estimates derived from those surveys and hours of expected pile driving hours described in the application, the mathematically estimated exposure, is 21 animals. The mathematical acoustic exposure methodology is detailed in the accompanying EA. However, NMFS also took into account the gregarious nature and frequency of beluga whales commonly seen around the Port. Therefore, based on these behavioral attributes of beluga whales, NMFS will authorize the take, by Level B harassment, of up to 34 beluga whales (or 9% of the population). As stated, reactions of marine mammals, in particular beluga whales, are expected to be mild to moderate short term behavioral (e.g., altered headings, change

in vocalizations and respiratory rates) and physiological (e.g., stress) responses. However, as described in the EA, harassment is would not have a significant adverse impact on the stock because individuals may respond behaviorally in a manner that may impact their transit (e.g., more use of the middle and west side of Knik Arm where pile driving sounds would not propagate), but would not impact their access to prey, nor occur in an area where calving or mating activities are known to occur.

Other species of marine mammals (i.e., harbor seals, harbor porpoises, and killer whales) that have been sighted within the affected area are present only occasionally and in low numbers. No rookeries, mating, or calving grounds are located around the Port. Harbor seals may occasionally haul-out; however, reports of seals around the Port are low. Harbor porpoises and killer whales, a species known to prey on Cook Inlet beluga whales, have also been seen in Knik Arm, but again, only occasionally. NMFS estimates that 20 of the above listed species may be incidentally harassed to noise from Project pile driving activities; however, this number of take is not expected to be reached due to the low occurrence of these species in Knik Arm. As with beluga whales, the instinctive behavior of marine mammals to avoid loud sounds and implementation of mitigation measures will eliminate exposure to sound levels at or above those considered Level A harassment, and therefore, serious injury or mortality will not occur. In fact, the mandatory shut down safety zone implemented by NMFS is actually 180m beyond Level A sound levels, an extra conservative measure implemented to ensure harassment is minimized and potential for injury is eliminated.

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

Response: Alaska Natives who reside in communities on or near Cook Inlet and some hunters who live in other Alaska towns and villages continue to subsistence harvest belugas (Stanek 1994, Angliss and Outlaw 2005). The subsistence beluga harvest transcends the nutritional and economic value of the whale and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA 2007). However, due to dramatic decreases in Cook Inlet beluga whale populations, on May 21, 1999, a temporary moratorium on beluga whale harvest was set in place in 1999 (Pub. L. No. 106-31,§3022, 113 Statute [Stat.] 57, 100) from such date until October 1, 2000. This moratorium was extended indefinitely on December 21, 2000 (Pub. L. No. 106-553, §1(a) (2), 114 Stat. 2762).

NMFS entered into co-management agreements with the Cook Inlet Marine Mammal Council (CIMMC) in 2000 through 2003, 2005, and 2006. CIMMC is an Alaska Native Organization (ANO) and is comprised of Cook Inlet Treaty Tribes (CITT), local Native hunters, and concerned Alaska Natives residing in the Cook Inlet region. CIMMC was organized and incorporated in 1994 to protect cultural traditions and promote conservation, management, and use of Cook Inlet marine mammals by Alaska Natives. No belugas were successfully harvested under the 2000 and 2006 agreements;

CIMMC harvested one whale under the 2001, 2002, and 2003 agreements; two whales were taken under the 2005 agreement; no agreement was signed in 2004 or in 2007 when hunters from the Native Village of Tyonek agreed to stand down from the hunt (NMFS News Release, April 16, 2007). As described in the Draft Harvest SEIS, NMFS proposes to implement a long-term plan to manage subsistence harvests of the Cook Inlet beluga whale stock (NOAA 2007). The objectives of a long-term subsistence harvest plan as evaluated in this SEIS are: 1) to allow this depleted stock to recover to its optimum sustainable population level, where it will no longer be considered depleted under the MMPA; and 2) to provide for a subsistence harvest by Alaska Natives in support of traditional cultural and nutritional needs.

NMFS issuance of an IHA is not expected to result in a significant impact to the Cook Inlet stock of beluga whales. While individuals may temporarily react to pile driving sounds, if exposed, these reactions are not expected to lead to long term adverse impacts such as reduced fitness, reproduction, longevity, or other critical behaviors such as feeding and calving. Beluga whales do not use the area around the Port as prime feeding or resting habitat. Sound propagation from pile driving is not expected to extend farther than 350m and 800m from impact and vibratory pile driving, respectively. The width of Knik Arm at the Port directly to the west side is approximately 4.2 kms. Therefore, a harassment free path for beluga whales and other marine mammals to travel is available. Further, beluga whales are currently seen at and around the Port and interacting with large vessels. This behavior indicates habituation to anthropogenic noise. Because of these factors, NMFS has determined that beluga whales will not be significantly impacted and the availability of beluga whales for subsistence harvesting would not be reduced due to Port expansion activities. Therefore, while expansion of the Port is designed to enhance the economy of the State of Alaska and facilitate increased import and export of products, natural or physical environmental impacts caused by Port expansion is unlikely to be interrelated with significant social or economic impacts related to subsistence hunting.

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

Response: The Port's Project is considered to be publically controversial in terms of cost and community impacts. While public concern related to environmental consequences exist, NMFS has comprehensively analyzed the potential impacts to marine mammals from issuance of an IHA and future regulations and has determined that authorizing the analyzed amount of harassment of marine mammals incidental to the Project would result in a negligible impact to the affected species and would not result in significant adverse effects on such species. In addition, because takes of marine mammals are not expected to impact the population in terms of abundance, fitness or reproduction, such takes of marine mammals would not result in reduced availability of Cook Inlet beluga whales to subsistence hunters beyond current population conditions. While it is NMFS's intent to issue a rulemaking and future LOAs in the future, this would occur only after consideration and analysis of the data gathered from the one-year IHA and further input from the public on the proposed rule. NMFS believes the approach

to issue a one-year IHA provides an opportunity to consider any additional knowledge gained from mitigation, monitoring and reporting in future considerations for a potential rulemaking.

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: Port construction would require the fill of wetlands and essential fish habitat; however, historic resources, park land, prime farmlands would not be affected. The new erected sheet wall would extend 9,893 ft. (3,015m) longitudinally along the shoreline and out 400 ft (122 m) from the existing usable land and dock. This shoreline area is considered essential fish habitat; however, sampling and modeling studies have predicted that fill of this habitat would not significantly alter overall habitat usage of areas around the Port. In addition, EFH at the Project site is only a fraction of this type of EFH present in Knik Arm. Restoration of alternative sites would also compensate for direct loss and degradation of this habitat. As explained in the EA and response to question 5 of this FONSI, cultural resources (i.e., beluga whales) would not be impacted to a degree which would hinder availability of this species for subsistence hunting beyond current conditions.

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

Response: While there are unknowns in the science of anthropogenically generated acoustic impacts to marine mammals, the science in this area is dynamic and the availability of research has expanded over the past several years. Available hearing and response data exist on both captive and wild marine mammals, including both cetaceans and pinnipeds. Beluga whales and harbor porpoise are among the most studied odontocetes with respect to hearing and sound. Harbor seals have also been studied extensively. These species availability in captivity has made them ideal candidates for hearing threshold studies. In addition, some wild animal reactions to anthropogenic sound have been observed. The conclusion that can be made analyzing all marine mammal acoustic data is that there is no set sound level to which marine mammals consistently react. This allows for some sense of uncertainty in reactions of these animals. However, the contexts in which one can infer how a marine mammal may react have been generally agreed upon. These include, but are not limited to: 1) sound pressure levels, frequency, duration, etc.; 2) physical and behavioral state of animals at time of exposure; and 3) ambient acoustic and ecological characteristics of the environment; and 4) context of the sound (e.g., does it sound like a predator). In addition, details such as if the sound is pulsed (e.g., impact pile driving) or continuous (e.g., vibratory pile driving) and if the sound source is stationary or moving also plays a role in determining effects. NMFS has considered these parameters in detail in the EA, and based on these and available data from other anthropogenic produced sounds (e.g., oil drilling playbacks), has determined that there is enough information regarding overall reactions of marine mammals to the type of sound sources used for the Project and Cook Inlet beluga whale

information (e.g. audiogram, environmental living conditions, present day interactions with vessels around the Port) to support NMFS' determination that a significant population or stock impact resulting from unknown risks is unlikely.

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

Response: As described in the Cumulative Impacts section of the EA, section 4.7, Port construction, alone or in combination with other actions, is not expected to result in cumulative significant impact to marine mammals. Two key mechanisms by which a significant impact to the Cook Inlet beluga whales could occur were examined. First, would the Project contribute to a loss of habitat in such a manner that a reduction in the overall abundance of available prey and accessible feeding areas would be expected? Second, would the disturbance of the beluga whale result in a behavioral change that might deflect these animals away from important feeding, breeding, calving, or other habitats, and in combination with other actions, limit access to such areas throughout their range or result in biologically significant effects?

While other marine mammals would be authorized to be taken by Level B harassment, the focus on the Cook Inlet beluga whale population is appropriate due to the small population size relative to historical records and their regular presence in Knik Arm during the construction season. As described in the EA, the loss of 135 acres of wetlands is not expected to result in reduced availability of prey for marine mammals. Fish and studies were conducted in 2004 and 2005 to enumerate and identify fish species and how they use the habitat around the Port. These studies concluded that fish species abundance and diversity is highly variable throughout the year but overall juvenile salmon were the most prevalent around the Port. The habitat to be filled is used as migrating, rearing, and foraging habitat for fish. However, habitats with the same attributes as the area to be filled exist is other areas of Knik Arm. For example, the extreme turbidity and poor visibility in the Arm likely severely limits the success of visual feeding by fish but visual feeding may be possible in microhabitats within the surface water in the Arm where short periods (minutes) of relative quiescence in the generally turbulent water allow partial clearing. From observations, it appears that these areas can occur along shorelines as well as in the middle of the Arm. Fish collected in offshore surface waters of upper Cook Inlet south of Fire Island suggest that juvenile salmon were not favoring shorelines as many of these fish had very full stomachs.

In addition, the Port is required, under their USACE permit, to adopt the following mitigation measures: (1) No in water fill placement or pile driving activities shall occur within a one week period following smolt release from the Ship Creek hatchery; (2) in-water sheet pile will be driven with a vibratory hammer to the maximum extent possible prior to using an impact hammer; (3) the final design plan shall, wherever possible, incorporate end-of-phase construction joints that provide potential refuge habitat areas for salmonids in the non-structural voids; (4) a Fish Rescue and Release Plan will be implemented to capture and release inadvertently trapped fish during construction; and (5) the refuge area shall be monitored for a minimum of 2 years

following construction to determine the extent and nature of use of salmonids. These mitigation measures, along with the natural ecology of fish (i.e., using habitats other than those to be filled) will increase fish survival rates and therefore decrease impacts of prey availability to beluga whales and would likely be part of, where applicable, other major construction activities in Knik Arm.

While Port construction would be related to increased shipping traffic as the Project would allow for the accommodation of more commercial vessels, sighting data show that beluga whales are not repelled by these types of vessels. Contrarily, belugas are more prone to avoid fast, erratic moving watercraft such as jet skis and smaller recreational vessels. NMFS Alaska region and other non-profit organizations have developed outreach education programs and materials to inform the public of beluga whale presence and how to operate personal vessels while they are in the vicinity. Other projects, such as the construction of Knik Arm Crossing and Port MacKenzie expansion have been proposed in the area near or adjacent to the Port and could result in harassment to marine mammals and habitat degradation/loss. However, to date, only one application for an MMPA authorization, from the Knik Arm Crossing, has been submitted to NMFS. The decision to issue this authorization is pending. Impacts of any future actions would be considered cumulatively with Port expansion and, if appropriate, mitigation measures would be set in place, such as stagnating pile driving times for each project, to ensure that beluga whales had access to vital feeding grounds and that noise from construction would not cumulatively impact beluga whales in a way that would have more than a negligible impact of the population.

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: The completed terminal redevelopment would not adversely affect district 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 historic resources. The Port has obtained appropriate zoning permits according to state and the Municipality of Anchorage legislation. All permits and associated documents can be found at http://www.portofanchorage.org/library.html.

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

Response: The construction of the new Port terminal would not increase the existing risk of introduction or spread of a non-indigenous species associated with international shipping or fill. Ships entering the Port could contain non-indigenous species in ballast water or attached to hulls; however, this is not related to Port expansion as vessels from all over the world have been docking at the Port for years. With regard to wetland habitat, all fill material would be supplied by material dredged around the Port or from adjacent land areas (e.g., Elemendorf Air Force Base); therefore, no non-indigenous species would be present in the fill material, eliminating the chance for leakage into the

marine environment.

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: Issuance of the IHA is likely to be followed by a proposed rulemaking as Port construction is expected to last until 2012; however, should unforeseen impacts arise from Port construction with respect to marine mammals or their habitat, the rulemaking and issuance of annual LOAs would not move forward unless additional mitigation was set in place which would alleviate such identified impacts. Additionally, as provided in 216.107(f), NMFS retains the authority to, after notice and public comment, withdraw, suspend, or revoke the IHA should unexpected circumstances arise. All data gathered from monitoring reports would be used in analyzing impacts to the human environment and presented in a supplemental EA, if appropriate, before a rulemaking would move forward.

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 Port and MARAD have obtained all appropriate permits and approval as described in Section 4.4 of the EA. Issuance of the IHA would not violate Federal, State, or local law or requirement imposed for the protection of the environment. Currently, no consultation is required under the Endangered Species Act for issuance of the proposed action; however, should Cook Inlet beluga whales become listed (determination due October 2008), a Section 7 consultation would be conducted in accordance with that Act.

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: There are no "target" species related to the proposed action as all takes of marine mammals would be incidental to Port expansion. As described in section 4.7 of the EA. Port expansion is not expected to result in cumulative adverse impacts which could have a substantial effect on marine mammals or any other species. Of the marine mammals species present within the action area, the Cook Inlet beluga whale would be most affected by Port expansion and other actions within or near the project area as they are the most abundant and their presence is predictable. While some projects are proposed in nearby and adjacent areas to the Port (e.g., Port MacKenzie expansion, Cook Inlet Ferry), an incidental harassment authorization would be required under the MMPA, and likely required as a condition of a USACE permit, before any harassment of marine mammals could occur from construction. NMFS would ensure that cumulative impacts from concurrent projects would not significantly adversely affect marine mammals exposed to harassment level activities. NMFS has analyzed the current population status of beluga whales, effects of habitat loss and degradations, and has determined that, due to mitigation and minimized harassment, Port expansion would not, individually or cumulatively, contribute to significant adverse effect that could have a substantial impact

on the target species or non-target species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the Environmental Assessment (EA) prepared for Issuance of an IHA to the Port of Anchorage and MARAD, pursuant to the ESA and MMPA, it is hereby determined that the issuance of the IHA, as described in the application and EA, will not significantly impact the quality of the human environment as described above and in the EA. NMFS has decided to select the proposed action, specifically issuance of a one-year IHA. In addition, all beneficial and adverse impacts of the proposed action have been considered to reach the conclusion of no significant impacts. Accordingly, preparation of an Environment Impact Statement for this action is not necessary

James H. Lecky, Director

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JUL 14 2008

Date