

**Finding of No Significant Impact
for Issuance of an Incidental Harassment Authorization for the
Woodard Bay Natural Resource Conservation Area Habitat
Restoration Project, Washington**

National Marine Fisheries Service

On June 9, 2010, NMFS received an application from the Washington State Department of Natural Resources (DNR) requesting authorization to take, by harassment, small numbers of marine mammals incidental to derelict creosote piling and structure removal associated with a habitat restoration project within the Woodard Bay Natural Resources Conservation Area (NRCA), Washington. In accordance with the National Environmental Policy Act (NEPA), NMFS has prepared an *Environmental Assessment for Issuance of an Incidental Harassment Authorization for the Woodard Bay Natural Resource Conservation Area Habitat Restoration Project, Washington* analyzing the direct, indirect and cumulative impacts on the human environment associated with issuance of an IHA to the DNR. The analyses in the EA, which is hereby incorporated by reference, support the findings and determinations described below.

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 proposed action is limited to authorizing harassment to marine mammals; therefore, it is not expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH). The DNR has been conducting activities within the Woodard Bay Natural Resources Conservation Area for many years, including pile removal. In July, 2004, NMFS concluded consultation with the WA DNR pursuant to the Magnuson-Stevens Fisheries Management Conservation Act (MSFMCA). NMFS determined that the habitat restoration project, including pile removal, will not result in an adverse impact on EFH and impacts to the species protected under the MSFMCA are not expected to be detrimental. The proposed action is not reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the MSFMCA and identified in Fishery Management Plans.

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: Issuance of the IHA is not expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area. Some seals are resident through the winter in the NRCA; therefore, foraging likely occurs here. However, no significant disruption to this predator-prey relationship as harassment is expected to result in only short-term behavioral disturbances such as flushing.

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

Response: The proposed action is not expected to have a substantial adverse impact on public health or safety. Work crews would abide by all best management practices and those developed by the DNR specifically for work within the Woodard Bay NRCA. Removal of creosote piles would have beneficial impacts to habitat and water quality.

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 would adversely affect harbor seals as it would allow for the take, by Level B (behavioral) harassment, of individuals within the action area during pile and structure removal activities. As described in the EA, pile and structure removal operations would occur around, but not immediately associated with, log booms that harbor seals use as haul-out habitat. The presence of crew and operation of support vessels and a vibratory hammer (for removal purposes only) may cause seals to flush into the water. In addition, elevated noise levels resulting from pile hammer operation may disturb animals in the water. The DNR would employ a number of mitigation and monitoring measures to ensure that the impact to seals is at the lowest level practical and that the total taking of seals results in a negligible impact to the affected species and stocks. Example mitigation includes working outside of critical pupping and molting seasons, removing piles located at the furthest distance from the seals first to allow them time to acclimate to crew presence, not removing piles immediately associated with the log booms harbor seals use as haulout habitat, and using a muffler pack on the hammer generator to quiet in-air noise. Seals are expected to exhibit short-term behavioral reactions in response to restoration activities; however, no long-term or significant impacts are anticipated.

Harbor seals are not listed under the Endangered Species Act; therefore, no critical habitat is designated for them. In addition, harbor seals are the only marine mammal which inhabits the action area; therefore, they are the only species authorized to be taken in the IHA. As such, direct, indirect or cumulative impacts to other species or stocks of marine mammals would not occur.

Critical habitat for the Puget Sound evolutionarily significant unit of Chinook salmon is found within the project area. Potential impacts to this species from restoration actions carried out or funded by the NOAA Restoration Center in the Pacific Northwest were analyzed by the NMFS Northwest Regional Office in a programmatic biological opinion; this opinion concluded that the proposed actions were not likely to jeopardize the continued existence of 21 species, including Chinook salmon.

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

Response: The proposed action is issuance of an authorization to take marine mammals; therefore, no physical environmental effects related to harassment would occur. The action area does not support marine mammal watching companies nor is there subsistence use of marine mammals within the action area. Recreational use of the NRCA is low in winter (due to unfavorable weather) and fewer seals use the area during the work window. Further, seals are not expected to flee or abandon the area. Therefore, any recreational seal watching will not be significantly affected. As such, there are no significant social or economic impacts interrelated with natural environmental effects from the proposed action.

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

Response: There has been no substantial dispute with the size, nature, or effect of the specified activity. Nor is there any information to suggest that the IHA, which authorizes marine mammal harassment from restoration activities, may cause substantial degradation to any element of the human environment, including marine mammals. NMFS only received public comments on the proposed IHA from the Marine Mammal Commission concerning mitigation and monitoring measures. Therefore, the effects on the quality of the human environment are not likely to be highly 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: Issuance of the IHA is 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. Although the NRCA in itself is a pristine, unique area, removing the creosote treated pilings and dilapidated structures will enhance the area and provide beneficial impacts.

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

Response: The Woodard Bay NRCA is a protected area and the habitat restoration project is designed to enhance habitat, providing more pristine environment for biological resources and responsible anthropogenic use. NMFS has issued numerous IHAs for pile driving, an activity which is considered to have more substantial impacts than the proposed vibratory hammer removal methods. Therefore, the effects from pile operations have been fully evaluated in the past and in the accompanying EA. In addition, the DNR prepared a *Woodard Bay Natural Resources Conservation Area Management Plan* in 2010 which fully evaluated the impacts of work, including habitat restoration, within the NRCA. Therefore, the effects on the human environment 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: The NRCA is a protected area, free from development and other intense anthropogenic use. Although the area does provide for recreational use, the primary reason the NRCA was established was to protect ecological systems, habitat, and scenic landscapes. Therefore, any work undertaken by the DNR would be conducted in a manner that would achieve this goal. Specific to harbor seals, the DNR is conducting work when harbor seals are least abundant and other anthropogenic disturbance is at a minimum (during winter). Therefore, issuance of the IHA is not related to other actions with individually insignificant, but cumulatively significant impacts.

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 proposed action is limited to authorizing harassment of harbor seals incidental to pile and structure removal activities. The only structures to be removed are dilapidated, creosote treated piles and a trestle and pier, none of which have scientific, historical or cultural significance. Therefore, the proposed action is not 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

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

Response: The proposed action cannot be reasonably expected to result in the introduction or spread of a non-indigenous species. The spread of non-indigenous species generally occurs through ballast water or hull attachment. Support vessels used during restoration activities would likely be small, local vessels and barges which do not make trans-ocean trips. As such, no non-indigenous species are likely to enter the Woodard Bay from the specified activity.

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: The proposed action will not set a precedent for future actions with significant effects or represent a decision in principle. Each authorization applied for under section 101(a)(5) of the MMPA must contain information identified in NMFS' implementing regulations. NMFS considers each activity specified in an application separately and must make required determinations for such activity.

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?

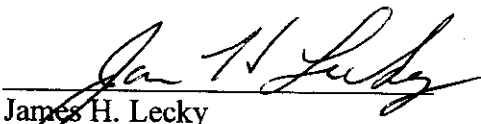
Response: Issuance of the proposed IHA would not result in any violation of Federal, State, or local laws for environmental protection. The applicant consulted with the appropriate Federal, State, and local agencies during the application process and would be required to follow associated laws.

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 the taking, by incidental harassment, of marine mammals during DNR's habitat restoration project. NMFS has determined that marine mammals may exhibit behavioral changes such as flushing and other short-term behavioral disturbances. As described in the accompanying EA and response to question 9 above, the Woodard Bay NRCA provides protection of native, pristine habitat used by a myriad of species and provides a recreational area for locals and visitors. The area is subject to some human disturbance such as small motorized fishing vessels, non-motorized vessel (e.g., kayaks) and hikers. However, these activities primarily occur in the spring, summer and fall due to good weather. The habitat restoration project would occur during winter (November through February) and therefore other anthropogenic disturbance would be minimal. Therefore, NMFS does not expect the authorized harassment to result in significant cumulative adverse effects on the affected species or stocks.

DETERMINATION

In view of the information presented in this document, and the analyses contained in the supporting EA, prepared for issuance of an IHA to the DNR to take marine mammals incidental to conducting habitat restoration activities within the Woodard Bay NRCA, it is hereby determined that permit issuance will not significantly impact the quality of the human environment. 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.


James H. Lecky
Director, Office of Protected Resources

OCT 27 2010

Date