

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION TO THE
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION TO TAKE MARINE MAMMALS
BY HARASSMENT INCIDENTAL TO MANETTE BRIDGE REPLACEMENT PROJECT
IN BREMERTON, WASHINGTON**

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

On December 24, 2009, the National Marine Fisheries Service (NMFS) received an application from the Washington State Department of Transportation (WSDOT) requesting an authorization for the harassment of small numbers of marine mammals incidental to construction and demolishing activities associated with the Manette Bridge replacement project in Bremerton, Washington.

In response to a receipt of the request from the WSDOT, NMFS proposes to issue an incidental harassment authorization (IHA) that authorizes takes by level B harassment of marine mammals in the wild 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). NMFS' IHA issuance criteria require 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 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.

In accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), NMFS has prepared a Environmental Assessment (EA) titled, "*Issuance of an Incidental Harassment Authorization to the Washington State Department of Transportation to Take Marine Mammals by Harassment Incidental to Manette Bridge Replacement Project in Bremerton, Washington*," (hereinafter, the 2010 WSDOT EA). NMFS proposes to issue the IHA with mitigation measures, as described in Alternative 2 of the 2010 WSDOT EA.

In addition, NMFS Office of Protected Resources consulted with NMFS' Northwest Regional Office (NWRO) on the potential effects of ESA-listed marine mammal species. In a memo dated August 3, 2009, NMFS NWRO stated that the proposed bridge replacement project may affect, but is not likely to adversely affect the listed marine mammal species and stocks. NMFS Office of Protected Resources subsequently determined that the issuance of the IHA for this activity would not lead to any effects to ESA-listed marine mammal species apart from those that were considered for the bridge replacement project. The analyses in the 2010 WSDOT EA support the findings and determination.

ANALYSIS

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (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 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 (FMP)?

Response: NMFS does not anticipate that the action (i.e., issuing an IHA to WSDOT as described in Alternative 2 of the 2010 WSDOT EA) would cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH).

The Manette Bridge replacement project will result in temporary disturbance including elevated sound pressure levels (SPLs) of sufficient magnitude to cause injury to fish occurring within 540 m (1,775 ft) of pile driving. Pile driving noise may affect the behavior of fish as far as 3,380 m (11,090 ft) from the source. In addition to potential direct effects on EFH species, elevated SPLs are also likely to lead to a localized decrease in the abundance of forage fish species for an intermediate-term period. As primary prey species, forage fish constitute a significant feature of EFH for Pacific salmon, west coast ground fish, and some of the coastal pelagic species.

The proposed action will result in the intermediate-term modification of benthic habitats within the Port Washington Narrows. These impacts will occur in the form of 358 m² (3,850 ft²) of temporary pilings, which will remain in place for up to 2.5 years, and residual holes in the Port Washington Narrows channel bed that remain after the temporary pilings are removed. Natural sediment transport is expected to refill these depressions, leading to complete habitat recovery within one year after the project is completed. The action will also result in an intermediate-term reduction in the habitat functions provided by 607 m² (6,530 ft²) of marine riparian and 283 m² (3,050 ft²) of adjacent upland vegetation. However, riparian and upland vegetation function is expected to be significantly improved once the planned vegetation enhancements implemented on these sites are sufficiently mature.

Collectively, these impacts are likely to adversely affect EFH for an intermediate-term period. Over the long-term, the net effects of the proposed action on EFH will be beneficial. The new bridge will have a smaller in-water footprint than the existing structure, increasing benthic habitat area in the Port Washington Narrows available for EFH by up to 679 m² (7,310 ft²). This increase may be as much as 30 percent smaller if the bases of two existing piers are left in place. It may be necessary to cut these piers off three feet above the substrate to keep creosote treated piles used in the original foundation fully encased in concrete. The proposed action will also produce long-term beneficial effects on water quality. Stormwater from the existing structure currently drains directly to surface waters. The new structure will route stormwater to Bremerton's stormwater treatment system. This will result in a net decrease in the annual loading of stormwater pollutants to surface waters.

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: NMFS has considered the effects of issuing an IHA on target and non-target species, including marine invertebrates, fish, sea turtles, seabirds, sea otters, and marine mammals. NMFS does not expect the action to affect an animal's susceptibility to predation, alter dietary preferences or foraging behavior, or change distribution or abundance of predators or prey. Accordingly, NMFS does not expect the action to have a substantial impact on biodiversity or ecosystem function in the vicinity of the proposed bridge replacement project.

The impacts of the action on marine mammals are specifically related to: (1) disturbance of marine mammals from construction noise; and (2) disturbance of marine mammals related to increased presence of human activities. The construction noise would be minimized by using a variety of mitigation measures, such as limiting pile driving to vibratory hammer as much as possible, and establishing an air bubble curtain system to attenuate noise during impact pile driving. NMFS considers the disturbances from construction noise to be localized and short-term. NMFS expects that these acoustic and visual disturbances would not result in substantial impact to marine mammals or to their role in the ecosystem.

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

Response: NMFS does not expect the issuance of an IHA to WSDOT to have a substantial adverse impact on public health or safety. The Manette Bridge replacement project is considered routine bridge construction and demolishing work that has been performed by construction crews in other projects on a regular basis.

The Manette Bridge replacement project would include: construction of temporary work trestles, which involves steel pile installation using both vibratory and impact driving methods; construction of new bridge piers, which involves excavation of benthic material; barge anchoring and usage; removal of the existing bridge; and removal of temporary work platforms. All construction debris and demolishing materials will be shipped off site and will be disposed of properly. The authorized activity does not pose a risk to public health or human safety.

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: NMFS Northwest Regional Office has concluded that the issuance of an IHA is: (1) not likely to jeopardize the continued existence of threatened eastern District Population Segment (DPS) Steller sea lions (*Eumetopias jubatus*) or the Southern Resident killer whale; and (2) not likely to adversely modify or destroy critical habitat, as the proposed Manette Bridge replacement project site is neither within nor nearby designated critical habitat for Steller sea lions or Southern Resident killer whales. NMFS does not expect that the activities for which take of marine mammals would be authorized by an IHA would result in takes of Steller sea lions or Southern Resident killer whales, based on the rare occurrence of these species and the mitigation and monitoring measures to avoid takes of these species.

In a 2009 Biological Opinion (BiOp) titled, “*Endangered Species Act - Section 7 Consultation Biological Opinion and Magnuson-Stevens Fisheries Conservation and Management Act Essential Fish Habitat Consultation Manette Bridge Replacement, Bremerton, Kitsap County, Washington Sixth Field HUC 1711001901*” and a memo, the NMFS Northwest Regional Office concluded the proposed bridge replacement may affect, but is not likely to adversely affect listed species. On May 28, 2010, FHWA requested the reinitiation of section 7 consultation with NMFS NWRO on the newly ESA-listed three Puget Sound rockfish species. The consultation is expected to be completed in July 2010.

The proposed issuance of an IHA to WSDOT constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. As the effects of the activities on listed marine mammals and salmonids were analyzed during a formal consultation between the FHWA and NMFS, and as the underlying action has not changed from

that considered in the consultation, the discussion of effects that are contained in the Biological Opinion and accompanying memo issued to the FHWA on August 3, 2009, pertains also to this action. Therefore, NMFS has determined that issuance of an IHA for this activity would not lead to any effects to listed marine mammal species apart from those that were considered in the consultation on FHWA's action. Although the reinitiation of section 7 consultation by FHWA on three Puget Sound rockfish species is still on-going, NMFS does not expect that the outcome would affect NMFS' action in issuing an IHA for the incidental take of marine mammals.

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

Response: NMFS does not expect the issuance of an IHA to WSDOT to result in significant social or economic impacts interrelated with natural or physical environmental effects. Effects of the Manette Bridge replacement project would be limited to the short-term harassment of the marine mammals authorized by the permit. Authorization of the proposed bridge replacement activities could result in a low level of economic benefit to construction companies performing the work, and to commuters residing in the Bremerton area using the newly constructed bridge. However, such impacts would likely be negligible on a regional or local level.

The activities authorized would not substantially impact use of the environment or use of natural or depletable resources, such as might be expected from large scale construction or resource extraction activities. Further, issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods.

NMFS has determined that issuance of the IHA will not adversely affect low-income or minority populations. There will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses, as there are no subsistence uses that take place in the areas affected.

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

Response: The effects of issuing an IHA to WSDOT as described in Alternative 2 of the 2010 WSDOT EA on the quality of the human environment are not likely to be highly controversial. There is no substantial dispute regarding the size, nature, or effect of the proposed action; specifically, there is no known scientific controversy over its potential impacts. During the public comment period, all comments received supported the issuance of the IHA.

The IHA includes mitigation and monitoring measures that are designed to: (a) eliminate the potential for serious injury or mortality; (b) minimize Level B behavioral harassment to marine mammals found in the vicinity of the project area; and (c) gather additional data from comprehensive monitoring reports to inform future decision-making. The IHA does not authorize lethal takes of marine mammals.

To allow other agencies and the public the opportunity to review and comment on the actions, NMFS published a notice of receipt of the WSDOT application and proposed IHA in the *Federal Register* on March 22, 2010 (75 FR 13502). During the 30-day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) and an e-mail from a private citizen, which all recommended that NMFS issue the requested authorization, provided that the required monitoring and mitigation measures are implemented.

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: No substantial impacts to park land, prime farmlands, wetlands, or wild and scenic rivers are anticipated as a result of the proposed Manette Bridge replacement project as none of these are found in the project area. Similarly, as described in the response to question 1 above, no substantial impacts to EFH, designated critical habitat (DCH) or ecologically critical areas are expected as the bridge replacement activities would have a limited footprint for a short duration. The natural processes in the environment are expected to fully recover from any impacts resulting from the construction and demolishing activities within the short term.

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

Response: The action of issuing an IHA to the WSDOT for the incidental take, by Level B harassment only, of small numbers of marine mammals is not expected to have significant effects on the human environment that would be unique or involve unknown risks.

While NMFS' judgments on impact thresholds for marine mammals in the vicinity of the project area are based on limited data, the risks are known and would involve the temporary, minimal harassment of marine mammals. No deaths or injuries to animals have been documented due to past coastal construction activities using barges, pile driving, or dredging in general. The most common response to construction noise and increased human presence is for marine mammals to depart the construction area temporarily.

The construction activities associated with the Manette Bridge replacement project are well planned to minimize any impacts to the biological and physical environment of the areas by implementing mitigation and monitoring protocols which ensure the least practicable adverse impact on the affected species or stocks of marine mammals.

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

Response: The proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts. While the stocks of marine mammals to which the animals in the vicinity of the bridge replacement site have the potential to be impacted by other human activities in inland waters in Washington (i.e., shipping and boating activities, bridge traffic, shoreline development) described in the cumulative impacts analysis in the 2010 WSDOT EA, these activities are generally separated both geographically and temporally from the proposed actions in the bridge construction site and are not occurring simultaneously on the same individuals of the population within the action area.

The short-term stresses (separately and cumulatively when added to other stresses the marine mammals in the vicinity of bridge construction site face in the environment) resulting from the proposed Manette Bridge replacement project would be expected to be minimal. Thus, NMFS concluded that the impacts of issuing an IHA to the WSDOT for the incidental take, by Level B harassment only, of small numbers of marine mammals are expected to be no more than minor and short-term.

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

Response: The issuance of an IHA is not expected to adversely affect districts, 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 historical resources.

The Manette Bridge is not considered a significant scientific, cultural or historical resource, nor is it listed in the National Register of Historic Places.

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 is not expected to lead to the introduction or spread of any non-indigenous species into the environment. The proposed Manette Bridge replacement project is not likely to introduce or spread any non-indigenous species to the construction site.

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: The issuance of an IHA is not expected to set a precedent for future actions with significant effects nor represent a decision in principle regarding future considerations. To ensure compliance with statutory and regulatory standards, NMFS' actions under section 101(a)(5)(D) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Issuance of an IHA to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize others to conduct similar activities. Subsequent requests for incidental take authorizations would be evaluated upon their own merits relative to the criteria established in the MMPA, ESA, and NMFS implementing regulations on a case-by-case basis.

This project has no unique aspects that would suggest it would be a precedent for any future actions. For these reasons, the issuance of an IHA to the WSDOT to conduct the bridge replacement project is not precedent setting.

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

Response: The issuance of an IHA would not violate any federal, state, or local laws for environmental protection. NMFS has fulfilled its section 7 responsibilities under the ESA (see response to Question 4). The WSDOT has fulfilled its responsibilities under MMPA for this action and the IHA currently contains language stating that the applicant is required to obtain any state and local permits necessary to carry out the action which would remain in effect upon issuance of the proposed amendment.

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 issuance of an IHA is not expected to result in any significant cumulative adverse effects on target or non-target species. Although NMFS acknowledges that marine mammals are


exposed to other human activities, the proposed Manette Bridge replacement project is not expected to result in any cumulative adverse effects to these species that could have substantial effects. Past monitoring reports for scientific research activities and coastal construction activities conducted in inland waters of Washington have concluded that no marine mammals were taken beyond authorized harassment levels nor were significantly affected by these activities.

The short-term stresses (separately and cumulatively when added to other stresses experienced by the marine mammals in the vicinity of the bridge construction site) resulting from the Manette Bridge replacement project would be expected to be minimal. Thus, NMFS concluded that the impacts of issuing an IHA to the WSDOT for the incidental take, by Level B harassment only, of small numbers of marine mammals are expected to be no more than minor and short-term. Therefore, no cumulative adverse effects that could have a substantial affect on any species would be expected.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Final Environmental Assessment titled, "*Issuance of an Incidental Harassment Authorization to the Washington State Department of Transportation to Take Marine Mammals by Harassment Incidental to Manette Bridge Replacement Project in Bremerton, Washington,*" prepared by NMFS, it is hereby determined that the issuance of an IHA for the take, by harassment, of small numbers of marine mammals incidental to the WSDOT's Manette Bridge replacement project in Bremerton, Washington, will not significantly impact the quality of the human environment, as described in this document and in the 2010 WSDOT EA.

In addition, all beneficial and adverse impacts of the 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. The EA, thereby, provides a supporting analysis for this FONSI.



James H. Lecky,
Director, Office of Protected Resources,
National Marine Fisheries Service

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Date