

**FINDING OF NO SIGNIFICANT IMPACT  
FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION TO THE  
PORT OF ANCHORAGE FOR THE TAKE OF MARINE MAMMALS INCIDENTAL TO A  
TEST PILE PROGRAM**

**NATIONAL MARINE FISHERIES SERVICE**

**BACKGROUND**

On February 15, 2015, the Municipality of Anchorage through its Port of Anchorage Department (POA) submitted an application to the National Oceanic and Atmospheric Administration (NOAA) requesting an Incidental Harassment Authorization (IHA) for the possible harassment of small numbers of harbor seals (*Phoca vitulina*), Cook Inlet beluga whales (*Delphinapterus leucas*), harbor porpoises (*Phocoena phocoena*), killer whales (*Orcinus orca*) and Steller sea lions (*Eumetopias jubatus*) incidental to pile installation associated with design of the Anchorage Port Modernization Project (APMP) in Cook Inlet, Alaska. Revised applications were submitted on April 3, 2015 and November 23, 2015.

In response to POAs request, National Marine Fisheries Service (NMFS) is proposed to issue an IHA 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). The IHA would be valid from April 1, 2016 through March 31, 2017 and authorizes takes of marine mammals incidental to the pile installation activities.

The proposed action for NMFS is a direct outcome of POA request for an IHA which involves the installation of 10 test piles. This type of in-water construction activity has the potential to cause marine mammals near 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.

In accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508, and National Oceanographic and Atmospheric Administration (NOAA) Administrative Order (NAO) 216-6, we completed an Environmental Assessment (EA) titled *Issuance of an Incidental Harassment Authorization for the Anchorage Port Modernization Project Test Pile Program in Cook Inlet, Alaska*. We incorporate this EA in its entirety by reference.

**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 IHA to POA or POA's 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 increase turbidity of the water quality. However, these impacts would be limited in time and space and reversible. The mitigation and monitoring measures required by the IHA would not affect habitat or essential fish habitat (EFH).

The North Pacific Fishery Management Council (NPFMC) identifies habitat in Cook Inlet as essential for Pacific salmon and groundfish species (NPFMC 2012, 2014). Estuarine and marine waters in Cook Inlet provide EFH for Chinook (*Oncorhynchus tshawytscha*), chum (*O. keta*), coho (*O. kisutch*), sockeye (*O. nerka*), and pink salmon (*O. gorbuscha*); Pacific cod (*Gadus macrocephalus*); walleye pollock (*Theragra chalcogramma*); and sculpin species (*Cottidae* spp.). While data are insufficient to describe EFH for eulachon<sup>1</sup> (*Thaleichthys pacificus*) and other species in the forage fish complex (NPFMC 2014), eulachon occur in the vicinity of the POA (Houghton et al. 2005) and are a common prey species for the Cook Inlet beluga whale (Moore et al. 2000).

While the Knik Arm of Cook Inlet is considered EFH for nine fish species, not all nine species are anticipated to occur in waters adjacent to the POA during the proposed work window. Based on species life histories, habitat preferences, and results of sampling in Knik Arm (Houghton et al. 2005), the Test Pile Program would not be anticipated to affect eulachon, Pacific cod, walleye pollock, or Pacific staghorn sculpin because these fish are generally not likely to be present in waters near the POA during the proposed work window. Eulachon presence would be anticipated during spawning migrations in April, May, and June. The three groundfish species have been documented in the Knik Arm in low numbers and only infrequently.

The U.S. Army Corp of Engineers (USACE) issued an Agency coordination letter on May 21, 2015 and preliminarily determined there would be no effect on EFH. NMFS determined that the effects on EFH by the project and issuance of the IHA assessed here would be temporary and minor. The main effect would be short-term disturbance that might lead to temporary and localized relocation of the EFH species or their food. The actual physical and chemical properties of the EFH will not be impacted. Therefore, NMFS, Office of Protected Resources, Permits and Conservation Division has determined that the issuance of an IHA for the taking of marine mammals incidental to the project will not have an adverse impact on EFH, and an EFH consultation is not required.

**2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?**

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

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<sup>1</sup> Eulachon are also locally referred to as "hooligan" and "candlefish." A personal use and small commercial fishery for eulachon occurs nearby in Knik Arm.

turbidity associated with pile driving and increased noise levels. However, the most likely impact to prey fish from the proposed Test Pile Program will be temporary behavioral avoidance of the immediate area. In general, the nearer the animal is to the source the higher the likelihood of high energy and a resultant effect (such as mild, moderate, mortal injury). Affected prey species would represent only a small portion of food available to marine mammals in the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by prey species of the disturbed area will still leave significantly large areas of fish and marine mammal foraging habitat in Knik Arm. Therefore, impacts are likely to be minor and temporary.

Marine mammals in the proposed action areas would be affected by Level B behavioral harassment. No injury or harassment to this relatively small number of marine mammals is unlikely to have an adverse impact on the continued existence of any species or stock. 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 IHA to POA or POA's proposed project would have a substantial adverse impact on public health or safety, as the taking, by harassment, of marine mammals would pose no human risk. The proposed in-water construction activities would occur during daylight hours near the shore in Anchorage, Alaska. The constant monitoring for marine mammals and other marine life during in-water construction activities effectively eliminates the possibility of any humans being inadvertently exposed to levels of sound that might have adverse effects.

**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 IHA for incidental take from POA's 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 Cook Inlet beluga whales and western Distinct Population Segment (wDPS) of Steller sea lions. POA has applied for incidental harassment an IHA for the incidental take of Cook Inlet beluga whales and the wDPS of Steller sea lion, that are listed as endangered under the ESA. Under section 7 of the ESA, NMFS Office of Protected Resources (OPR), has conducted a joint formal consultation with the National Marine Fisheries Service, Alaska Regional Office, on this proposed Project. NMFS issued its Biological Opinion which concluded that the proposed action is not likely to jeopardize the continued existence of Cook Inlet beluga whales or wDPS of Steller sea lions and will not 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 both proposed actions on those aspects of the environment, indicating that only the production of underwater sound via vibratory and impact pile driving during the proposed activities has the potential to affect marine mammals in a way that requires IHA 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, POA 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 expect any marine mammals to be taken by Level A harassment (injury), as we do not anticipate serious injury, or mortality would occur. 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 IHA for POA's activity would not result in inequitable distributions of environmental burdens or access to environmental goods.

We have determined that issuance of the IHA 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 only a very limited amount of boat-based harbor seal subsistence hunting occurs in areas near the proposed action area. Therefore, we expect that no significant social or economic effects would result from our issuance of an IHA or POA's proposed project.

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

**Response:** NMFS has issued numerous Authorizations for incidental take from pile driving activities. The anticipated impacts on marine mammals are not highly controversial. Similar authorizations for the temporary disturbance of marine mammals, including endangered species, incidental to pile driving have not raised substantial concerns. There has been no substantial dispute with the size, nature, or effect of the proposed action. Nor is there any information to suggest that the Authorization may cause substantial degradation to any element of the human environment, including marine mammals. NMFS has assessed and authorized incidental take for pile driving activities and developed, in conjunction with applicants and after consideration of public and Marine Mammal Commission comments, relatively standard mitigation and monitoring measures. The scope of this action is not unusually large or substantial, and includes similar and more stringent mitigation and monitoring measures required for other activities that could take marine mammals, including belugas. We have reviewed the best available information, including monitoring reports of past actions, to conclude the POA's activities will have a negligible impact on marine mammals, including Cook Inlet beluga whales.

A notice of NMFS' proposal to issue an IHA was published in the *Federal Register* on December 16, 2015 (80 FR 78176). During the 30-day public comment period, the Marine Mammal Commission (Commission) and Friends of Animals (FoA) each submitted letters. The Center for Biological Diversity (CBD) and The Humane Society of the U.S. (HSUS) submitted comments jointly. The comments primarily focused on: (1) requirements under the MMPA, NEPA and ESA; (2) impacts of noise on Cook Inlet beluga whales and habitat; and (3) the mitigation and monitoring measures proposed by POA and NMFS. Based on these comments, NMFS modified its proposed mitigation to require shutdown to avoid Level B harassment of beluga whales, and eliminated Level B harassment zone shutdown for groups of other whales. After addressing public comments (which area addressed in detail in NMFS' final *Federal Register* notice announcing the IHA determination

and the Final EA), NMFS determined that it met the requirements of the MMPA, ESA and other applicable statutes.

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

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

*Response:* Issuance of an IHA for the POA's proposed project is not related to other actions with individually insignificant but cumulatively significant impacts. We do not expect that the impacts would be cumulatively significant. While the actual re-development of the port would occur on a larger scale in the same immediate area as the Test Pile Program, it would presumably require appropriate mitigation and monitoring efforts to minimize adverse impacts. Additionally, any future IHAs would have to undergo the same permitting process and would take POA's proposed Test Pile Program into consideration when addressing cumulative effects.

**10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?**

*Response:* We have determined that the issuance of an IHA to POA or POA's 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 IHA to POA 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 IHA does not mandate marine transits outside of the local area or have any relation to bilge water or other potential causes of the introduction or spread of a non-indigenous species.

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

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

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

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

**14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?**

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

Cumulative effects refer to the impacts on the environment that result from a combination of past, existing, and reasonably foreseeable human activities and natural processes. NMFS examined several activities for potential cumulative effects including climate change, coastal development, marine pollution, and disease. Because of the relatively small area of potential disturbance and the temporary nature of the potential disturbance or displacement along with the corresponding

mitigation measures, the action would not result in synergistic or cumulative adverse effects that could have a substantial effect on any species.

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 IHA. Thus, we do not expect any cumulative adverse effects on any species as a result of our action.

#### **DETERMINATION**

In view of the information presented in this document, the analysis contained in NMFS Final EA and the supporting information provided by POA, it is hereby determined the issuance of an IHA for the take, by Level B harassment of small numbers of marine mammals incidental to pile installation in Cook Inlet, Alaska would not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, the preparation of an Environmental Impact Statement for this action is not necessary.

*Donna S. Wieting*

*for*

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Donna S. Wieting  
Director, Office of Protected Resources,  
National Marine Fisheries Service

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Date

