



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION
TO HARVEST TO TAKE MARINE MAMMALS INCIDENTAL TO
THE COOK INLET PIPELINE CROSS INLET EXTENSION PROJECT, ALASKA**

NATIONAL MARINE FISHERIES SERVICE

INTRODUCTION AND BACKGROUND

The National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) is proposing to issue an Incidental Harassment Authorization (IHA) to Harvest Alaska LLC (Harvest) pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). This IHA will be valid from April 15, 2018 through April 14 2019 and authorizes takes, by Level B harassment, of marine mammals incidental to pipeline installation activities associated with the Cook Inlet Pipeline (CIPL) Cross Inlet Extension Project, Cook Inlet, Alaska.

NMFS proposed action is a direct outcome of the Harvest's request which involves the installation of two pipelines in Cook Inlet, Alaska. This type of in-water construction activity has the potential to cause take of marine mammals, by Level B harassment, within the project area. Harvest requested an incidental harassment authorization from NMFS for this potential taking. NMFS may authorize the taking of small numbers of marine mammals in an IHA provided that the taking 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, where applicable, the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and their habitat, and requirements pertaining to the monitoring and reporting of such takings.

The National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) Regulations (40 CFR 1500 -1508), and NOAA policy and procedures¹ require all proposals for major federal actions be reviewed with respect to environmental consequences on the human environment. NMFS's issuance of this IHA allowing the taking of marine mammals, consistent with provisions under the MMPA and incidental to the applicants' specified activities, is considered a major federal action. Therefore, NMFS prepared an Environmental Assessment (EA) titled, "*Issuance of an Incidental Harassment Authorization to Harvest Alaska to Take Marine Mammals by Harassment Incidental to the Cook Inlet Pipeline Cross Inlet Extension Project in Cook Inlet, Alaska* " to evaluate the significance of the impacts of our proposed action.

¹ NOAA Administrative Order (NAO) 216-6A "Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands" issued April 22, 2016 and the Companion Manual for NAO 216-6A "Policy and Procedures for Implementing the National Environmental Policy Act and Related Authorizations" issued January 13, 2017



The EA addresses the potential environmental impacts of two alternatives to meet NMFS's purpose and need:

- Alternative 1 (Preferred Alternative): Under the Preferred Alternative, NMFS would issue IHAs to Harvest for take, by harassment, of marine mammals during the pipeline installation activities, taking into account the prescribed means of take, mitigation measures, and monitoring requirements.
- Alternative 2 (No Action Alternative): For NMFS, denial of an MMPA authorization constitutes the NMFS No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny incidental take authorization requests and to prescribe mitigation, monitoring, and reporting with any authorizations. Under NMFS's No Action Alternative, NMFS would not issue the IHA, and NMFS assumes Harvest would not conduct their planned pipeline installation activities. The No Action Alternative served as a baseline in the EA against which the impacts of the Preferred Alternative were compared and contrasted.

ANALYSIS SUMMARY

The CEQ Regulations state that the significance of an action should be analyzed both in terms of "context" and "intensity" and lists ten criteria for intensity. The Companion Manual for NOAA Administrative Order 216-6A requires consideration of CEQ's context and intensity criteria (40 CFR 1508.27(a) and 40 CFR 1508.27(b)) along with six additional factors for determining whether the impacts of a proposed action are significant. Each criterion is discussed below with respect to NMFS's proposed action and is considered individually as well as in combination with the others.

1) Can the proposed action reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?

The proposed action of issuing an incidental harassment authorization to Harvest is expected to have adverse impacts (*i.e.*, take) on select marine mammal species. However, NMFS has determined that any taking, by Level B (behavioral) harassment only, would have a negligible impact on the affected species or stock and that Harvest would employ mitigation and monitoring measures effecting the least practicable adverse impact. The proposed action would not result in any significant effect to marine mammals for which take is authorized.

2) Can the proposed action reasonably be expected to significantly affect public health or safety?

We do not expect our proposed action (*i.e.*, issuing an IHA to Harvest) to have a substantial adverse impact on public health or safety as the taking, by harassment, of marine mammals would pose no risk to humans.

3) Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

The proposed action cannot 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. The pipeline project is not located within a national, marine sanctuary, marine protected area, or a National Park. State wildlife conservation areas are designated in Cook Inlet; however, those occur mostly on land with some portions along the coasts and would not be impacted by our proposed action of the issuance of Authorizations to take marine mammals. Although EFH was identified in Cook Inlet for walleye Pollock, rock sole, Pacific cod, skate, weathervane scallop, Pacific salmon, and sculpin, we do not anticipate NMFS' proposed action of authorizing take of marine mammals and the associated mitigation and monitoring to impact EFH; therefore, an EFH consultation was not conducted. Further, NMFS Biological Opinion, April 25, 2018, concludes both our and Harvest's proposed action would not adversely affect critical habitat.

Pipeline installation activities (*e.g.*, trenching, pulling the pipes, dive work, etc.) would minimally and briefly impact physical habitat features, such as substrates and/or water quality. The pipelines and secrete bags would be permanent structures on the sea floor; however, any impact is limited to the footprint.

4) Are the proposed action's effects on the quality of the human environment likely to be highly controversial?

The effects of issuing an IHA to Harvest as described in Alternative 1 of the EA on the quality of the human environment are not likely to be highly controversial because: (1) there is no substantial dispute regarding the size, nature, or effect of the proposed action and (2) there is no known scientific controversy over the potential impacts of the proposed action.

To allow other agencies and the public the opportunity to review and comment on the action, NMFS published a notice of the draft EA in the *Federal Register* on February 27, 2018 (83 FR 8437). We received one public comment letter in response to the publication of the proposed draft EA in the *Federal Register*. Students from the University of Arizona (Students) submitted comments suggesting NMFS reconsider the amount of take and degree of impact on marine mammals and proposed including other agencies, communities, and tribes in development of the EA. In response, NMFS increased the amount of take for each species (except humpback whales) and added to additional species to the analysis. No comments from any other agency, community or tribe were submitted in response to the draft EA. The Marine Mammal Commission, which provides comments on all proposed incidental take authorizations as part of their established role under the MMPA (§ 202 (a)(2)), provided comments on the proposed IHA; however, their comments relevant to the project were in line with the Students comments.

5) Are the proposed action's effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The action of issuing an IHA to Harvest 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. NMFS routinely issues IHA that requires evaluating the impacts of noise on marine mammals and often find an IHA is not necessary for low level sources such as vessels moving barges. Here, we determined the activities may result in take given the duration and concentrated area of activity. Risks are known and the implementation of mitigation and monitoring measures are designed to decrease potential harassment. No deaths or injuries to animals have been documented due to installing pipelines. The most common response to noise generated by work vessels and other commercial and industrial in-water noise (e.g., dredging and pile driving at the Port of Anchorage) is for marine mammals ranges from no reaction to not closely approaching the area and temporary changes in vocalization and swim patterns.

6) Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

The issuance of this IHA may inform the environmental review for future projects, but would not establish a precedent or represent a decision in principle about future actions. NMFS's actions under MMPA Section 101(a)(5)(A) and (D) are considered individually and are based on the best available scientific information, which is continuously evolving, and requests for authorizations are evaluated on their own merits relative to the criteria established in the MMPA and 50 CFR Part 216 on a case-by-case basis. Therefore, issuance of an authorization to a specific entity for a given activity does not guarantee or imply that NMFS will issue future authorizations upon request in relation to similar activities. For these reasons, the issuance of this IHA to Harvest would not set a precedent.

7) Is the proposed action related to other actions that when considered together will have individually insignificant but cumulatively significant impacts?

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 Harvest project site have the potential to be impacted by other human activities within waters of Cook Inlet (e.g., vessel traffic, oil and gas activities, commercial fishing) described in the cumulative impacts analysis in the EA, these activities are generally separated both geographically and temporally from the proposed actions in the project 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 the Harvest project site face in the environment) resulting from the proposed pipeline installation work would be expected to be minimal (not measurable in terms of impacting fitness or population level consequences). Thus, NMFS concluded that the impacts of issuing an IHA to Harvest 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 (limited to noise exposure time).

The Cumulative Effects section of the EA describe the past, present, and reasonably foreseeable future actions, but concludes that the impacts of Harvest's pipeline installation activities are expected to be no more than minor and short-term with no potential to contribute to cumulatively significant impacts.

8) Can the proposed action reasonably be expected 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?

We have determined that our proposed action is not an undertaking with the potential to affect historic resources because our proposed action is limited to the issuance of an IHA to harass marine mammals consistent with the MMPA definition of Level B harassment. 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 either because such resources do not exist within the project area or are not expected to be adversely affected. In particular, Harvest's project area is not considered a significant scientific, cultural or historical resource.

9) Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?

We have determined that our proposed issuance of an IHA to Harvest would likely result in the taking, by Level B harassment, of a small number of eight species of marine mammals, three of which are listed as threatened or endangered under the Endangered Species Act (ESA). Harvest's proposed action of installing two pipelines, hence the location of taking, occurs within Cook Inlet beluga whale winter critical habitat. The effects of our proposed action and Harvest's proposed activities is not anticipated to jeopardize the continued existence of the ESA-listed species for which take is authorized and would not adversely affect critical habitat, as determined by a Biological Opinion issued by NMFS Alaska Region on April 25, 2018.

We do not anticipate that take by injury (Level A harassment), serious injury, or mortality would occur, nor have we authorized take by injury, serious injury, or mortality. We also expect that any harassment would result in impacts that are the lowest level practicable due to the incorporation of the proposed mitigation measures.

10) Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection?

The issuance of an IHA would not violate any federal, state, or local laws for environmental protection. Harvest 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.

11) Can the proposed action reasonably be expected to adversely affect stocks of marine mammals as defined in the Marine Mammal Protection Act?

Similar to the effects of the action as described in response to #9 above, the proposed action includes issuance of an incidental harassment authorization to Harvest to take, by Level B harassment, marine mammals incidental to the installation of an oil and gas pipelines in Cook Inlet, Alaska. The impacts of the proposed construction activities on marine mammals are specifically related to acoustic stimuli. Marine mammals may be exposed to operational activities involving vessels such as obstacle removal, trenching, pipe pulling, moving a barge, and use of underwater tools. To reduce the potential for disturbance from the proposed construction activities Harvest would 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." The potential impact from exposure to the work ranges from no reaction to avoidance, masking, and other potential behavioral responses such as cessation of vocalizations and increased swim speeds. No habitat features (e.g., river mouths) are present within the action area; therefore, we do not anticipate marine mammals to be engaged in concentrated foraging behavior. Habitat use of the area is primarily travel. We do not anticipate the project would create physical or acoustic barriers which would prevent animals from using the habitat in this manner (i.e., animals would not be able to reach intended destinations). We have determined the issuance of the IHA would have a negligible impact of affected marine mammal species or stocks.

12) Can the proposed action reasonably be expected to adversely affect managed fish species?

We do not expect our proposed action of issuing an IHA for the take of marine mammals incidental to pipeline installation activities to adversely affect managed fish species because the behavioral harassment of marine mammals has no effect on these resources. Further, mitigation measures such as reducing noise levels by powering down vessels or tying up to barges would have secondary beneficial impacts to managed fish by reducing overall noise levels.

13) Can the proposed action reasonably be expected to adversely affect essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act?

We do not expect our proposed action of issuing an IHA for the take of marine mammals incidental to pipeline installation activities to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat because the behavioral harassment of marine mammals has no effect on these resources. In addition, the mitigation and monitoring measures required by the IHA would not affect ocean and coastal habitats or essential fish habitat because monitoring would be conducted by land based or platform based observers

and mitigation is generally limited to activity timing (e.g., delay if marine mammals are observed) and does not alter how any physical characteristics of how the activities would be carried out.

14) Can the proposed action reasonably be expected to adversely affect vulnerable marine or coastal ecosystems, including but not limited to, deep coral ecosystems?

We do not expect our proposed action of issuing an IHA for the take of marine mammals incidental to pipeline installation activities to adversely affect vulnerable marine or coastal ecosystems because the project area does not contain vulnerable ecosystems, including deep sea corals, and behavioral harassment of marine mammals has no effect on these resources. In addition, the mitigation and monitoring measures required by the IHA would not affect marine or coastal ecosystems. Finally, the project area does not contain

15) Can the proposed action reasonably be expected to adversely affect biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)?

We do not expect our proposed action of issuing an IHA for the take of marine mammals incidental to the pipeline installation activities to have a substantial impact on biodiversity or ecosystem function within the affected environment because any disturbance to the sea floor during the activities would be temporary (except for the actual pipeline and sandbags) and localized. The pipelines and seacrete bags would be permanent structures on the sea floor; however, any impact is limited to their footprint. In addition, the project area does not serve as important marine mammal foraging habitat so no predator-prey dynamics are expected to be impacted.

16) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

The issuance of the IHA cannot reasonably be expected to lead to the introduction or spread of any non-indigenous species into the environment because the activities associated with the proposed project would only be in-water construction and are limited to the area the construction activity is taking place. Vessels used for the project would originate from the Alaska area; therefore, the potential for ballast water to contain non-indigenous species insignificant.

Determination

Based on the information presented herein along with the application and analysis in the Final, it is hereby determined the issuance of the IHA to Harvest will not significantly impact the quality of the human environment. In addition, we addressed all beneficial and adverse impacts of the action to reach the conclusion of no significant impacts associated with NMFS's issuance of this IHA. Accordingly, the preparation of an Environmental Impact Statement for this action is not necessary.



Donna S. Wieting
Director, Office of Protected Resources

APR 25 2018
Date _____