FINDING OF NO SIGNIFICANT IMPACT FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION TO THE CITY OF UNALASKA TO TAKE MARINE MAMMALS INCIDENTAL TO DOCK CONSTRUCTION ACTIVITIES IN UNALASKA, ALASKA

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) is proposing to issue an Incidental Harassment Authorization (IHA) to the City of Unalaska (COU) 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 28, 2017 through April 27, 2018 and authorizes takes, by Level B harassment, of marine mammals incidental to dock construction activities in Unalaska, Alaska.

NMFS proposed action is a direct outcome of the COU request which involves pile removal and installation. This type of in-water construction activity has the potential to cause marine mammals near the project area to be behaviorally disturbed, therefore, qualifies for a permit from NMFS. NMFS criteria for an IHA requires 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, 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.

The issuance of an IHA to the COU allows the taking of marine mammals, consistent with provisions under the MMPA, and is considered a major federal action under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). Therefore, NMFS prepared an Environmental Assessment (EA) titled, "*Issuance of an Incidental Harassment Authorization to the City of Unalaska to Take Marine Mammals by Harassment Incidental to the Unalaska Marine Center Dock Replacement Project in Unalaska, Alaska,*" to evaluate the significance of the impacts of our proposed action. This EA was prepared in accordance with NEPA, the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508Based on the Final EA and the COU's IHA application, NMFS's alternatives include:

- Alternative 1 (Preferred Alternative). Issue an IHA to the COU authorizing unintentional take of marine mammal's incidental to the construction activities. The authorization includes the prescribed means of take and requires mitigation measures, monitoring and reporting.

- Alternative 2 (No Action Alternative). Do not authorize the COU for unintentional takes of marine mammal's incidental to construction activities, in which case, for the purposes of the NEPA analysis, NMFS assumes that the COU would proceed without an IHA and cause incidental take without the mitigation and monitoring measures prescribed by NMFS.

ANALYSIS

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. 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 our proposed action of issuing an IHA for the take of marine mammals incidental to the conduct of dock construction activities or the COU's proposed activities would cause substantial damage to the ocean and coastal habitats and/or essential fish habitat because the IHA is limited to the take of marine mammals incidental to dock construction and does not authorize the construction activity itself, thus it is limited to activities that do not have an effect on ocean and coastal habitats or essential fish habitat. Similarly, the mitigation and monitoring measures required by the IHA for the COU's proposed activities are limited to actions that minimize take of marine mammals and improve monitoring of marine mammals, and do not alter any aspect of the construction activity itself.

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 our proposed action of issuing an IHA for the take of marine mammals incidental to the conduct of dock construction activities to have a substantial impact on biodiversity or ecosystem function within the affected environment. The taking, by harassment, of marine mammals would result in temporary disturbance to four species of marine mammals that are in the water near the construction site, but the effects 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 our proposed action of issuing an IHA to the COU 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.

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 proposed action of issuing an IHA would likely result in limited adverse effects to Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina*), humpback whale (*Megaptera novaeangliae*), and killer whale (*Orcinus orca*).

   There are two marine mammal species listed as endangered or threatened under the ESA with confirmed or possible occurrence in the proposed project area: Steller sea lion, specifically the

western Distinct Population Segment (DPS), and humpback whale, specifically the Western North Pacific DPS and Mexico DPS. Under the ESA, NMFS has designated critical habitat for Steller sea lions based on the location of terrestrial rookery and haulout sites, spatial extent of foraging trips, and availability of prey items (50 CFR 226.202). NMFS has defined Steller sea lion critical habitat by a 20-nautical mile (nm) radius encircling a major haul-out or rookery (50 CFR 226.202). The COU's proposed construction activities fall within an area designated as critical habitat for Steller sea lions under the ESA, as they are within 20 nm of three haulouts and one rookery for Steller sea lions. However, our proposed action and the COU's proposed activities would not adversely affect critical habitat as determined by a Biological Opinion on the proposed action and the COU's proposed construction activities. Likewise, the Biological Opinion on the proposed action and the COU's proposed construction activities concluded that our proposed action and the COU's proposed activities would not jeopardize the continued existence of western DPS Steller sea lions or the Western North Pacific and Mexico DPSs of humpback whale.

The EA evaluates the affected environment and potential effects of the COU's proposed construction activities, indicating that only the sound associated with the construction activities have the potential to affect four species of marine mammal in a way that requires authorization under the MMPA.

The impacts of the proposed construction activities on marine mammals are specifically related to acoustic stimuli. To reduce the potential for disturbance from the proposed construction activities the COU 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." 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 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 interrelated with significant social or economic impacts. Issuance of an IHA would not result in inequitable distributions of environmental burdens or access to environmental goods as the action is confined to university personnel and contractors.

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. Therefore, we expect that no significant social or economic effects would result from our proposed issuance of an IHA or the COU's proposed construction activities.

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

Response: The effects of our issuance of an IHA for the take of marine mammals incidental to the proposed activities are not highly controversial. Similar activities that have authorized the temporary disturbance of marine mammals incidental to pile driving and removal have not raised substantial concerns, and we are unaware of any party characterizing these activities as controversial. Specifically, we did not receive any comments raising substantial questions or concerns about the size, nature, or effect of potential impacts from our proposed action or the COU proposed project. There is no substantial dispute over effects to marine mammals.

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: 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 because none of these are found in the project areas. Similarly, as described in the response to question 1 above, our authorization is limited to the take of marine mammals incidental to dock construction and does not authorize the construction activity itself, thus it is limited to activities that do not have an effect on cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas. The natural processes in the environment are expected to fully recover from any impacts resulting from the construction activities.

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 COU 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 because this type of construction work has been performed routinely.

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 both vibratory and impact hammers for pile driving and vibratory hammers for pile removal. The most common response to construction noise is for marine mammals to depart the construction area temporarily.

We have issued incidental take authorizations for similar activities or activities with similar types of marine mammal harassment in Alaska and the U.S. West Coast, and conducted NEPA analysis on those projects. In no case have impacts to marine mammals from these past activities, as determined from monitoring reports, exceeded our analysis under the MMPA and NEPA. The construction activities associated with the COU project are well planned to minimize any impacts to the biological and physical environment of the areas by implementing mitigation and monitoring protocols that ensure the least practicable adverse impact on the affected species or stocks of marine mammals. Therefore, we expect any potential effects from the proposed issuance of our authorization to be similar to prior activities and 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: 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 COU project site have the potential to be impacted by other human activities within waters of the eastern Aleutian islands (i.e., coastal development) 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 COU's project site face in the environment) resulting from the proposed construction activities would be expected to be minimal. Thus, NMFS concluded that the impacts of issuing an IHA to the COU 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.

The Cumulative Effects section of the EA and the material incorporated by reference describe the past, present, and reasonably foreseeable future actions, but concludes that the impacts of the COU's construction activities are expected to be no more than minor and short-term with no potential to contribute to 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: 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, the COU's Marine Center Dock is not considered a significant scientific, cultural or historical resource, nor is it listed in the National Register of Historic Places. The COU's project site is located on the islet known as Amaknak Island, as is the Dutch Harbor Naval Operating Base and Fort Mears National Historic Landmark. However, the National Park Service confirmed that the two components of the Landmark nearest to the proposed COU project site are .25 to .5 miles from the project area, and that there are no components of the Landmark in the immediate area of the proposed COU dock project.

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

Response: 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.

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. The issuance of an IHA to take marine mammals incidental to in-water construction activities in the coastal environment is a routine process under the MMPA. 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. The 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 COU to conduct the proposed dock construction project would not be precedent setting.

13) Can the proposed action reasonably be expected to threaten a violation of 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. The COU 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 proposed action allows for the taking, by incidental harassment, of marine mammals during construction activities in Dutch Harbor, Alaska. 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 in the EA including climate change, coastal development, marine pollution, fisheries interactions, and vessel traffic. 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 COU's IHA application, and the analysis contained in the Final EA prepared by NMFS, it is hereby determined the issuance of an IHA to the COU would not significantly affect the quality of the human. In addition, we have addressed all beneficial and adverse impacts of the action 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

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

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Date