

Finding of No Significant Impact
on Issuance of Regulations and subsequent Letters of Authorizations
to the U.S. Army Corps of Engineers for Take of Marine Mammal incidental to the
Rehabilitation of the Jetty System at the Mouth of the Columbia River,
Oregon and Washington

National Marine Fisheries Service

The National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) proposes to issue regulations and subsequent Letters of Authorization (LOAs) to the U.S. Army Corps of Engineers (Corps) pursuant to section 101(a)(5)(A) 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 regulations will be valid from May 1, 2017 through April 30, 2022. This initial LOA will be valid from May 1, 2017 through April 30, 2018 and authorizes takes by Level B harassment of marine mammals incidental to pile driving and removal associated with the Rehabilitation of the Jetty System at the Mouth of the Columbia River, Oregon and Washington.

NMFS' proposed action is a direct outcome of the Corps' request for regulations and LOAs for construction activities which involve pile installation and removal using vibratory pile driving. This type of in-water construction activity has the potential to cause marine mammals in the vicinity of the project area to be behaviorally disturbed and, therefore, qualifies for a permit from NMFS. NMFS' criteria for an LOA requires that the taking of marine mammals authorized 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 LOA 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 regulations and subsequent LOAs to the Corps allows the taking of marine mammals, consistent with provisions under 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, we prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of the impacts associated with NMFS issuance of an IHA and we are adopting the Revised Final Environmental Assessment *Columbia River at the Mouth, Oregon and Washington Rehabilitation of the Jetty System at the Mouth of the Columbia River*. The Corps' Final EA contains a thorough analysis of the environmental consequences of their proposed action on the human environment, including specific assessment of the effects of pile driving and underwater sound on marine mammals. NMFS reviewed the Corps' EA to ensure that the necessary information and analyses were included to support NMFS proposed action to issue regulations and subsequent LOAs and adopt their Revised Final EA. The preparation of this FONSI and adoption of

the Corps' EA was completed in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508.

Analysis

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 NMFS proposed action is analyzed based on 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: We do not expect that our action of issuing regulations and subsequent LOAs to the Corps or the Corps' 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 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 Authorization would not affect habitat or essential fish habitat (EFH).

EFH has been identified in the waters surrounding the Jetty System. Effects on EFH by the project and issuance of a LOA 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 species for which EFH has been designated or their food. The actual physical and chemical properties of the EFH would not be impacted. Therefore, NMFS, Office of Protected Resources, Permits and Conservation Division has determined that the issuance of a LOA for the taking of marine mammals incidental to the project would 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 regulations and subsequent LOAs to the Corps or the Corps' proposed project would have a substantial impact on biodiversity and/or ecosystem function within the affected environment. The proposed action may temporarily disturb species for which EFH has been designated and their prey due to increased turbidity associated with pile driving. Marine mammals in the proposed action areas would also be affected by Level B harassment. However, 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 regulations and subsequent LOAs to the Corps or the Corps' proposed actions would have a substantial adverse impact on public health or safety, as the taking, by harassment, of marine mammals would pose no human risk.

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 a regulations and subsequent LOAs to the Corps for incidental take from the Corps' proposed project may 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 seven species of marine mammals: killer whale, humpback whale, gray whale, harbor porpoise, killer whale, Steller sea lion, California Sea lion and harbor seal.

The Corps has applied for regulations and subsequent LOAs for the incidental take of a single marine mammal species, the humpback whale, which has several distinct populations segments (DPS) which are listed as endangered under the Endangered Species Act (ESA). Under section 7 of the ESA, the Corps and NMFS Office of Protected Resources (OPR), have conducted a joint formal consultation with the National Marine Fisheries Service, Northwest Regional Office, on this proposed Project. NMFS issued a Biological Opinion on March 18, 2011 which concluded that the proposed action is not likely to jeopardize the continued existence of humpback whales or destroy or adversely modify designated critical habitat. Since the biological opinion was finalized, NMFS has published a final rule which identified 14 distinct population segments (DPSs) of humpback whales (81 FR 62259; September 8, 2016). Three proposed DPSs could occur in the action area, the Hawaii DPS, the Mexico DPS and the Central America DPS. The Mexico DPS is listed as threatened while the Central America DPS is listed as endangered.

Subsequent to the completion of the 2011 biological opinion, the WCR prepared an Incidental Take Statement (ITS) to be appended to the biological opinion. The WCR compared the ITS, as well as the effects analysis and conclusions in the biological opinion, with the amount of and conditions of take proposed in the LOA. The WCR determined that the effects of NMFS's issuing an LOA to the Corps for the taking of humpback whales incidental to construction activities are consistent with those described in the 2011 biological opinion. The extent of the takes analyzed in the biological opinion ranged from 0 - 19 whales per day, which is more than the 15 individual takes being authorized under the MMPA over the five-year authorization period. In addition, the short-term potential displacement or deflection around the action area and the small number of takes would also not be expected to have population level impacts or jeopardize any of the DPSs that could occur in the action area. The 2011 biological opinion remains valid and the MMPA authorization provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other

basis to require re-initiation of the opinion. Based on the conclusions in the biological opinion, the takes would not jeopardize the continued existence of two humpback whale DPSs occurring in the project area that are currently listed under the ESA, and no further consultation was needed.

The EA evaluates the affected environment as it relates to marine mammals and their habitat as well as potential effects of the proposed issuance of an IHA on those aspects of the environment, indicating that only the production of underwater sound via vibratory pile driving during the proposed activities has the potential to affect marine mammals in a way that requires authorization 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, the Corps 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 injury or mortality would actually occur. Finally, 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 Authorization or the Corps activity would not result in inequitable distributions of environmental burdens or access to environmental goods.

We have determined that issuance of regulations and subsequent LOAs 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 there are no such uses of marine mammals in the proposed action area. Therefore, we expect that no significant social or economic effects would result from our issuance of LOAs.

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

Response: The effects of issuing regulations and subsequent LOAs to the Corps 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; (2) there is no known scientific controversy over the potential impacts of the proposed action; and (3) all comments received during the public comment period

supported the issuance of regulations and subsequent LOAs.

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 regulations and subsequent LOAs for the Corps' 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 Authorization 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 vibratory pile driving are not unique or unknown, nor is there significant uncertainty about impacts. NMFS has issued Authorizations for similar activities or activities with similar types of marine mammal harassment and conducted NEPA analysis on those projects. Each Authorization 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 cases 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 regulations and subsequent LOAs to the Corps or the Corps' 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. No future projects in the vicinity are known; however, any future Authorizations would have to undergo the same permitting process and would take the Corp's proposed project 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 regulations and subsequent LOAs to the Corps or the Corps' 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 regulations and subsequent LOAs to the Corps or the Corps' proposed project 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 Authorization 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 represents a decision in principle about a future consideration?

Response: Our proposed action of issuing regulations and subsequent LOAs would not set a precedent for future actions with significant effects or represent a decision in principle about a future consideration. Each MMPA authorization applied for under 101(a)(5)(A) must contain information identified in our implementing regulations. We consider each activity specified in an application separately and, if we issue a LOA 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 a LOA 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 threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: The issuance of regulations and subsequent LOAs 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?

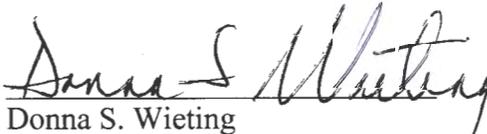
Response: Cumulative effects refer to the impacts on the environment that result from a combination of past, existing, and reasonably foreseeable human activities and natural processes. The proposed action allows for the taking, by incidental harassment, of marine mammals during the rehabilitation of Jetty System at MCR. We have determined that marine mammals may experience 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 regulations and subsequent LOAs would result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to human presence.

The Corps concluded in its EA that there would be no cumulatively significant, adverse effects on any biological resources. In addition, the Corps determined that there are a number of actions that are ongoing or planned that would provide a cumulative, long-term improvement to aquatic and wildlife resources and habitat.

DETERMINATION

In view of the information presented in this document and the analysis contained in the Corps' Revised Final EA titled *Columbia River at the Mouth, Oregon and Washington Rehabilitation of the Jetty System at the Mouth of the Columbia River* and documents that it references, we have determined that issuance of regulations and subsequent LOAs to the Corps in accordance with Alternative 1 (Preferred Alternative) would not significantly impact the quality of the human environment. 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.


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Date

