FINDING OF NO SIGNIFICANT IMPACT FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION TO THE ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES FOR THE TAKE OF MARINE MAMMALS INCIDENTAL TO A KODIAK FERRY TERMINAL AND DOCK IMPROVEMENTS PROJECT

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Marine Fisheries Service (NMFS) received an application from the Alaska Department of Transportation and Public Facilities (DOY&PF) requesting an Incidental Harassment Authorization (IHA) under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) for the taking of marine mammals incidental to a Kodiak Ferry Terminal and Dock Improvements project. This project involves the reconstruction of the existing ferry terminal at Pier 1 in Kodiak, Alaska from September 30, 2015 through September 29, 2016.

Under the MMPA, NMFS shall grant authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must prescribe, where applicable, the permissible methods of taking; other means of effecting the least practicable impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking.

The proposed action is a direct outcome of DOT&PF requesting an Authorization to take marine mammals, by harassment, incidental to conducting the project. DOT&PF's activities, which have the potential to injure and/or behaviorally disturb marine mammals, warrant an incidental take authorization from us under section 101(a)(5)(D) of the MMPA.

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 to the Alaska Department of Transportation and Public Facilities for the Take of Marine Mammals Incidental to a Kodiak Ferry Terminal and Dock Improvements Project.* We incorporate this EA in its entirety by reference.

We have prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of the impacts of our selected alternative – Alternative 1 (Preferred Alternative) titled, "Issuance of an Authorization with Mitigation Measures," and our conclusions regarding the impacts related to our proposed action. Under this Alternative, we would issue an Authorization under the MMPA with required mitigation, monitoring, and reporting measures. Based on our review of DOT&PF's proposed action and the measures contained within Alternative 1, we have determined that no direct, indirect, or cumulatively significant impacts to the human environment would occur from implementing the Preferred Alternative.

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 Authorization to DOT&PF or DOT&PF'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 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).

Essential Fish Habitat (EFH) has been designated within the project area for the Alaska stocks of Pacific salmon, walleye pollock, Pacific cod, yellowfin sole (*Limanda aspera*), arrowtooth flounder (*Atheresthes stomias*), rock sole (*Lepidopsetta* spp.), flathead sole (*Hippoglossoides elassodon*), sculpins (Cottidae), skates (Rajidae), and squid (Teuthoidea). The DOT&PF initiated informal EFH consultation with NMFS on April 30, 2013. NMFS determined that the project, as proposed, would not adversely affect EFH, and determined no further consultation was required (NMFS 2013).

Effects on EFH by the project and issuance of the Authorization 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 Authorization 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 Authorization to DOT&PF or DOT&PF's proposed project would have a substantial impact on biodiversity and/or ecosystem function within the affected environment. The proposed action may temporarily disturb EFH species 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. Additionally, a small number of Steller's sea lions (*Eumetopias jubatus*) may be exposed to Level A harassment. However, it is believed that this small subset of sea lions may be hearing impaired in which case there is likely to be no additional injury. Furthermore, any acoustic injury to this small number of sea lions is unlikely to have an adverse impact on the continued existence of the 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 Authorization to DOT&PF or DOT&PF'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.

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 Authorization for incidental take from DOT&PF'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 Steller sea lions. A very small subset of this group may be exposed to Level A injury threshold which may include permanent threshold shift. However, it is thought that some of these sea lions are hearing impaired or deaf due to exposure to seal bombs used by local fisherman to deter these animals from stealing fish.

DOT&PF has applied for incidental harassment authorization for the incidental take of a single species of marine mammal, western depleted population segment (wDPS) of Steller sea lion, that is listed as endangered under the ESA. Under section 7 of the ESA, DOT&PF and NMFS Office of Protected Resources (OPR), have 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 wDPS of Steller sea lions, or destroy or adversely modify designated critical habitat (NMFS 2015).

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 as well as drilling 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, DOT&PF 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." While a small number of Steller sea lions may be taken by Level A harassment (injury), 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 Authorization or DOT&PF's activity would not result in inequitable distributions of environmental burdens or access to environmental goods.

We have determined that issuance of the Authorization 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 an Authorization or DOT&PF's proposed project.

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

Response: The effects of our issuance of an Authorization 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 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 DOT&PF's 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: Issuance of the Authorization or DOT&PF'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 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 and impact 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 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 Authorization to DOT&PF or DOT&PF'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. No future projects in the vicinity are known; however, any future Authorizations would have to undergo the same permitting process and would take DOT&PF'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 an Authorization to DOT&PF or DOT&PF'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 A and 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 Authorization to DOT&PF 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 does it represent a decision in principle about a future consideration?

Response: Our proposed action of issuing an Authorization would not set a precedent for future actions with significant effects or represent a decision in principle. Each MMPA authorization 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 Authorization 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 Authorization 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 Authorization 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 the Kodiak Ferry Terminal and Dock Improvements project. 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 Authorization 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, disease, and whale watching. 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 Authorization. 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 DOT&PF, it is hereby determined the issuance of an IHA for the take, by Level B harassment and limited Level A harassment of Steller sea lions, of small numbers of marine mammals incidental to DOT&PF reconstruction of the existing ferry terminal at Pier 1 in Kodiak, Alaska, 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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SEP 30 2015

Date

Literature Cited

NMFS (National Marine Fisheries Service). 2013. Informal consultation concurrence letter to Federal Highway Administration. PCTS# AKR-2013-9277, 29 July 2013.

NMFS (2015). Endangered Species Act Section 7(a)(2) Biological Opinion: Kodiak Ferry Dock and Terminal Improvements. NMFS Consultation Number : AKR-2015-9446. NMFS Alaska Region. July 31, 2015.