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 the ExxonMobil Production Company to Take Marine Mammals Incidental to Conductor Pipe Installation Activities at the Harmony Platform in the Santa Barbara Channel off the Coast of California

National Marine Fisheries Service

BACKGROUND

We (National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) propose to issue an Incidental Harassment Authorization (IHA) to ExxonMobil Production Company (ExxonMobil), under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) for the taking of small numbers of marine mammals, incidental to installing conductor pipes at Harmony Platform in the Santa Barbara Channel offshore of California.

Our proposed action results from ExxonMobil's request for an authorization to take marine mammals, by harassment, incidental to conductor pipe installation activities at the Harmony Platform in the Santa Barbara Channel off the coast of California. ExxonMobil's impact hammer pipe-driving activities, which have the potential to cause marine mammals to be behaviorally disturbed, warrant an incidental take authorization from us under section 101(a)(5)(D) of the MMPA.

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), we completed an Environmental Assessment (EA) titled, *Issuance of an Incidental Harassment Authorization to ExxonMobil Production Company to Take Marine Mammals by Harassment Incidental to Conductor Pipe Installation Activities at Harmony Platform in the Santa Barbara Channel offshore of California.* The EA focuses primarily on the environmental effects of authorizing the incidental take of marine mammals incidental to ExxonMobil's activities.

This EA also incorporates by reference the following documents per 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216-6 § 5.09(d):

- ExxonMobil's *Incidental Harassment Authorization Application Harmony Platform Santa Ynez Production Unit* and *Addendum: Assessment of Airborne and Underwater Noise at Harmony Platform*;
- JASCO Applied Sciences Ltd.'s *Assessment of Airborne and Underwater Noise from Pile Driving Activities at the Harmony Platform: Preliminary Assessment*;
- NMFS's *Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Conductor Pipe Installation Activities at Harmony Platform in Santa Barbara Channel Offshore of California*. Notice; proposed Incidental Harassment Authorization; request for comments. *Federal Register* 79 (June 30, 2014): 36743-36769;

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- NMFS's *Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the Southwest Fisheries Science Center*;
- LGL Ltd.'s *Environmental Assessment of a Marine Geophysical Survey by the R/V Melville in the Santa Barbara Channel, November 2008*;
- The U.S. Department of the Navy's *Hawaii-Southern California Training and Testing Activities Draft Environmental Impact Statement/Overseas Environmental Impact Statement*.

NMFS has prepared this Finding of No Significant Impact (FONSI) to evaluate the significance of impacts of NMFS's action. This FONSI presents 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. Based on our review of ExxonMobil's proposed conductor pipe installation activities and the mitigation and monitoring measures contained in Alternative 1, we have determined that no 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 Council on Environmental Quality (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 (FONSI) and has been considered individually, as well as in combination with the others. The significance of this action is analyzed 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 (EFH) as defined under the Magnuson-Stevens Act (MSA) and identified in Fishery Management Plans (FMP)?**

   Response: The proposed action (i.e., issuing an IHA to ExxonMobil for the take of small numbers of marine mammals incidental to conductor pipe installation activities) cannot reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or EFH as defined under the MSA and identified in FMPs. The proposed addition of the six conductor pipes to the existing 51 conductor pipes will not substantively change the physical structure of Harmony Platform. The impact hammer pipe-driving activities would not result in substantial damage to ocean and coastal habitats, including marine mammal habitat. Additionally, the acoustic sources are not expected to affect physical habitat features, such as substrates and water qualityResearch activities, military testing and training activities, oil and gas activities, vessel traffic and noise, commercial fisheries, and other activities in the study area generate noise throughout the year. The additional noise produced by conductor pipe installation activities is comparatively minor in terms of total additional acoustic energy and will be brief relative to the other activities.

   NMFS, Office of Protected Resources, Permits and Conservation Division has determined that the issuance of an IHA for the taking of marine mammal incidental to conductor pipe installation activities at the Harmony Platform in the Santa Barbara Channel off the coast of

California and the mitigation and monitoring measures required by the IHA will not have an adverse impact on EFH; therefore, 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 the proposed action to have a substantial impact on biodiversity or ecosystem function within the affected environment. The effects of our proposed action of authorizing takes by Level B harassment incidental to ExxonMobil's conductor pipe installation activities would be limited to temporary behavioral responses (such as brief masking of natural sounds) and temporary changes in animal distribution. These effects would be short-term and localized. No injury (Level A harassment), serious injury, or mortality is anticipated or authorized.

3) **Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?**

   Response: We do not expect the proposed action to have a substantial adverse impact on public health or safety because the proposed activities would occur in the open ocean away from any populated area. Although the conductor pipe installation activities may carry some risk to the personnel involved (i.e., vessel, helicopter, or mechanical accidents during conductor pipe installation-related activities), the applicant and those individuals working with the applicant would be required to be adequately trained or supervised in performance of the underlying activity (i.e., the impact hammer pipe-driving) to minimize such risk to personnel. The conductor pipe installation activities are not expected to have any adverse impacts on traffic and transportation, as this platform has been in place at the existing location for several decades and the working sound source will be for a relatively short period of time (i.e., approximately 90 operational days) in a relatively small geographic area. Also, the proposed action presents little risk of exposure to hazardous materials or wastes, risk of contracting diseases, or risk of damage from a natural disaster.

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: Our proposed action may adversely affect 32 species of marine mammals, 5 of which are listed under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq*). The EA evaluates the affected environment and potential effects of our proposed action, indicating that ExxonMobil's conductor pipe installation activities has the potential to result in Level B harassment of marine mammals. The activities and any required monitoring and mitigation measures would not affect physical habitat features, such as substrates and water quality.

   We have determined that the proposed conductor pipe installation activities may result in some Level B harassment (in the form of short-term and localized changes in behavior) of small numbers of marine mammals. The impacts of the conductor pipe installation activities on marine mammals are specifically related to acoustic activities. These impacts are expected to be temporary in nature, and would not result in substantial impact to marine mammals or to their role in the ecosystem.

The proposed action may have the potential to adversely affect the following species of marine mammals listed as threatened or endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.): humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale. Pursuant to section 7 of the ESA, the NMFS Office of Protected Resources, Permits and Conservation Division, consulted with the NMFS West Coast Regional Office, Protected Resources Division on the issuance of an IHA under section 101(a)(5)(D) of the MMPA because the action of issuing the IHA may affect threatened and endangered species under NMFS's jurisdiction. In September 2014, the NMFS West Coast Regional Office, Protected Resources Division issued a Biological Opinion, which concluded that the issuance of an IHA to ExxonMobil for the proposed conductor pipeline installation activities is not likely to jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of any designated critical habitat.

The following mitigation measures will be required to minimize adverse effects to protected marine mammals:

(1) proposed establishment of exclusion zones to avoid injury to marine mammals and visual monitoring of the exclusion zones by Protected Species Visual Observers (PSOs);
(2) shut-down procedures when PSOs detect marine mammals within or about to enter the exclusion zone while the impact hammer is operating;
(3) ramp-up procedures;
(4) in-water and in-air acoustic monitoring to validate modeled sound levels and collect ambient noise level measurements; and
(5) procedures for situations and species of particular concern such as emergengy shut-down procedures for North Pacific right whales sighted at any distance from the platform; and avoidance of concentrations of blue, fin, sei, humpback, or sperm whales.

Taking these measures into consideration, we expect the responses of marine mammals from the Preferred Alternative to be limited to avoidance of the area around the conductor pipe installation activities and short-term behavioral changes, falling within the MMPA definition of "Level B harassment."

We do not anticipate that marine mammal take by injury (Level A harassment), serious injury, or mortality would occur, nor have we authorized take by injury, serious injury, or mortality. Number of individuals of all marine mammal species taken by harassment are expected to be small (relative to species or stock abundance), and the take is anticipated to have a negligible impact on any species or stock. We expect that harassment takes should be at the lowest level practicable due to the incorporation of the mitigation measures required by the IHA.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The primary impacts to the natural and physical environment are expected to be acoustic and temporary in nature (and not significant), and not interrelated with significant social or economic impacts. Issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods. We have determined that issuance of the IHA will not adversely affect low-income or minority populations. Further, there will be no

impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses. Therefore, we do not expect significant social or economic effects to result from our issuance of the IHA.

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

Response: The effects of the proposed action are not likely to be highly controversial. Specifically, there is not a substantial dispute about the size, nature, or effect of potential impacts from NMFS's proposed action. .

On June 30, 2014, NMFS published a notice of a proposed IHA in the *Federal Register* (79 FR 36743) disclosing to the public the effects on marine mammals, making preliminary determinations, and including a proposed IHA. During the 30-day public comment period, NMFS received a large quantity of form letters from supporters of SierraRise and Sierra Club. NMFS also received comments from the Center for Biological Diversity, the California Coastal Commission, and the Marine Mammal Commission. We fully considered all of the public comments in preparing the final IHA and the EA. Specific responses to public comments will be provided in the *Federal Register* notice announcing the issuance of the IHA. Based on those comments, NMFS re-evaluated the mitigation and monitoring measures proposed, added additional mitigation measures for species of special concern, and ultimately determined that the proposed measures are the most feasible and effective measures capable of implementation by the applicant.

Although numerous members of the public have raised concern over the effects of the conductor pipe installation activities, we have determined, based on the best available scientific literature, the limited and intermittent duration of the conductor pipe installation activities, and the low-level effects to marine mammals, that our IHA will not result in significant impacts to the human environment. NMFS has issued IHAs for marine mammal take for similar types of impact hammer pipe-driving for over 5 years. Previous projects of this type required marine mammal monitoring reports, which have been reviewed by us 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 our analyses under the MMPA and NEPA.

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, EFH, or ecologically critical areas?**

Response: There are no unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas that could be affected by the proposed action because no such resources exist in the vicinity of the conductor pipe installation activities; therefore, no impacts to these resources are anticipated. All proposed activities would occur in the marine environment and would not impact terrestrial resources. No discharges to the marine environment are proposed within the action area; therefore, there would be no impacts to water resources.

8) **Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?**

Response: The proposed action is not likely to result in effects considered to be highly uncertain or involve unique or unknown risks.

The potential risks of conductor pipe installation activities resulting in elevated sound levels are not unique or unknown, nor is there significant uncertainty about impacts. We have issued IHAs for marine mammal take for similar types of impact hammer pipe-driving for over 5 years, and monitoring reports received pursuant to the requirements of the IHAs have indicated that there were no unanticipated or unauthorized impacts as a result of the pipe-driving. The best available science, including input from prior monitoring reports for pipe-driving, supports our determination that adverse impacts are unlikely and will be minimized through the implementation of the proposed mitigation and monitoring requirements.

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. The EA and the documents it references analyzed the issuance of an IHA for the take of marine mammals incidental to conductor pipe installation activities in light of other human activities within the study area. We expect the following combination to result in no more than minor and short-term impacts to marine mammals in the action area in terms of overall disturbance effects: (a) our issuance of an IHA with prescribed mitigation and monitoring measures for the conductor pipe installation activities; (b) other conductor pipe installation activities in the northeast Pacific Ocean off the coast of California; (c) vessel traffic, noise, and collisions; (d) research activities; (e) military testing and training activities; (f) oil and gas activities; (g) commercial fisheries; and (h) climate change.

ExxonMobil's conductor pipe installation activities, when conducted separately or in combination with other activities, have the potential to affect marine mammals in the action area. However, the conductor pipe installation activities conducted under the requirements of an IHA authorizing Level B harassment of marine mammals is not expected to result in cumulatively significant impacts when considered in relation to other separate actions with individually insignificant effects.

The cumulative effects section of the EA and the material incorporated by reference go into more detail regarding other past, present, and reasonably foreseeable future actions, but concludes that the impacts of ExxonMobil's proposed conductor pipe installation 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 the proposed action would not 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 as none are known to exist at the site of the proposed conductor pipe installation activities and because the proposed action is not expected to alter any physical resources.

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

Response: We have determined that the proposed action does not have the potential to introduce or spread non-indigenous species as the conductor pipes being installed are new and do not have any marine species attached to them.

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 proposed action would not set a precedent for future actions with significant effects, nor would it represent a decision in principle about future considerations. Each MMPA authorization applied for under section 101(a)(5) must contain information identified in our implementing regulations. We consider each activity specified in an application separately and, if we issue an IHA, we must determine that the impacts from the specified activity would result in a negligible impact to the affected species or stocks. 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 threaten a violation of any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: Issuance of the IHA would not result in any violation of Federal, State, or local laws for environmental protection. We have fulfilled our section 7 responsibilities under the ESA (see response to Question 4) and the MMPA for this action. 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 cannot reasonably be expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species.

We have determined that marine mammals may exhibit short-term behavioral changes such as avoidance of or changes in movement within 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 our issuance of an IHA to result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to elevated sound levels.

We have issued incidental take authorizations for other impact hammer pipe-driving activities that may have resulted in the harassment of marine mammals, but they are dispersed both geographically (throughout the U.S.) and temporally, are short-term in nature, and all use mitigation and monitoring measures to minimize impacts to marine mammals. Because of the relatively short time that the project area will be ensonified (not more than approximately 90 operational days), the action will not result in synergistic or cumulative adverse effects that could have a substantial effect on any species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA titled, *Issuance of an Incidental Harassment Authorization to the ExxonMobil Production Company to Take Marine Mammals by Harassment Incidental to Conductor Pipe Installation Activities at the Harmony Platform in the Santa Barbara Channel off the Coast of California,* we have determined that issuance of an IHA to ExxonMobil in accordance with Alternative 1 the EA would not significantly impact the quality of the human environment, as described in this FONSI and in the EA.

In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Donna S. Wieting

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SEP 17 2014

Date