Department is revoking the order with respect to TPBI effective July 28, 2010, the date upon which USTR directed the Department to implement its final results. Accordingly, we will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties entries of the subject merchandise manufactured and exported by TPBI which were entered, or withdrawn from warehouse, for consumption on or after that date and to discontinue the collection of cash deposits for estimated antidumping duties for merchandise manufactured and exported by TPBI.

We will instruct CBP to continue to suspend liquidation of all entries of subject merchandise from all other exporters or producers. We will instruct CBP to continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension-of-liquidation instructions will remain in effect until further notice. The all-others rate of 4.69 percent established in this section 129 determination will be the new cash-deposit rate on or after July 28, 2010, for all exporters of subject merchandise for which the Department has not calculated an individual rate.

This determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: August 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issues Raised in the Issues and Decision Memorandum

1. Targeted Dumping.
2. All-Others Rate.
3. Effective Date.

[FR Doc. 2010–19943 Filed 8–11–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY04

General Advisory Committee to the U.S. Section to the Inter–American Tropical Tuna Commission; Meeting Announcement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the General Advisory Committee and the Scientific Advisory Subcommittee to the U.S. Section to the Inter–American Tropical Tuna Commission (IATTC) on September 17, 2010. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will be held on September 17, 2010, from 9 a.m. to 5 p.m. PDT (or until business is concluded).

ADDRESSES: The meeting will be held in the Large Conference Room (Room 370) at NMFS, Southwest Fisheries Science Center, 3333 North Torrey Pines Court, La Jolla, California, 92037–1023. Please notify Heidi Hermsmeyer prior to September 10, 2010, of your plans to attend the meeting, or interest in a teleconference option.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, Southwest Region, NMFS at *Heidi.Hermsmeyer@noaa.gov*, or at (562) 980–4036.

SUPPLEMENTARY INFORMATION: In accordance with the Tuna Conventions Act, as amended, the Department of State has appointed a General Advisory Committee (GAC) and a Scientific Advisory Subcommittee (SAS) to the U.S. Section to the IATTC. The U.S. Section consists of four U.S. Commissioners to the IATTC and a representative of the Deputy Assistant Secretary of State for Oceans and Fisheries. The advisory bodies support the work of the U.S. Section in an advisory capacity with respect to U.S. participation in the work of the IATTC, with particular reference to the development of policies and negotiating positions pursued at meetings of the IATTC. NMFS, Southwest Region, administers the GAC and SAS in cooperation with the Department of State.

Meeting Topics

The meeting topics will include, but are not limited to, the following: (1) updates from the IATTC scientific staff on issues such as the status of tropical tuna stocks and conservation recommendations; (2) updates on other international agreements in the Pacific Ocean such as the Western and Central Pacific Fisheries Commission; (3) regulatory changes that could affect tuna fisheries in the eastern Pacific Ocean; (4) the status of Antigua Convention implementing legislation; (5) input and advice from the advisory bodies on issues that may arise at the upcoming AIDCP/IATTC meetings in September 2010, including, but not limited to, potential U.S. proposals, potential proposals from other IATTC members, the potential for an albacore working group, and potential revisions to IATTC Resolution C–09–01; (6) relevant changes in personnel and responsibilities at NOAA and the U.S. Department of State; and (7) other issues as they arise.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Hermsmeyer at (562) 980–4036 by September 10, 2010.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 6, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–19954 Filed 8–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XY07

Takes of Marine Mammals Incidental to Specified Activities; Piling and Structure Removal in Woodard Bay Natural Resources Conservation Area, Washington

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Washington State Department of Natural Resources (DNR) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to derelict creosote piling and structure removal within the Woodard Bay Natural Resources Conservation Area (NRCA). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the DNR to incidentally harass, by Level B Harassment only, harbor seals during the specified activity.

DATES: Comments and information must be received no later than September 13, 2010.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-

West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *0648–XY07@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address. NMFS is also preparing an Environmental Assessment (EA) for this action (see NEPA section at the end of this notice) and will also be made available at the above listed Web site when complete.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289, ext 151.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On June 9, 2010, NMFS received an application from the WA DNR requesting authorization to take, by harassment, small numbers of marine mammals incidental to derelict creosote piling and structure removal associated with a habitat restoration project within the Woodard Bay NRCA, Washington. The specified activity includes removal of approximately 615 timber pilings and a trestle located in Woodard Bay and a portion of pier superstructure located at the mouth of Chapman Bay. Pilings would be removed by vibratory hammer extraction methods and structures would be removed via cable lifting. In addition, approximately 25 nest boxes for purple martins would be relocated from removed pilings to pilings that are retained for seal habitat and buffer, using a small boat if necessary and would require a battery powered drill. Activities would occur across 40 days between November 1, 2010, and February 28, 2011.

Harbor seals have been utilizing the remnant log boom structures at Woodard Bay NRCA as haul-out habitat for resting, pupping and molting for more than 30 years. These booms are situated among the piles and structure planned for removal. The WA DNR anticipates harbor seals will flush into the water upon crew arrival and onset of pile and structure removal activities; hence, harbor seals may be harassed during pile removal activities. The DNR is thus requesting an IHA to take harbor seals, by Level B harassment, incidental to the piling and structure removal project.

Description of the Specified Activity

The Woodard Bay NRCA, located within Henderson Inlet in southern Puget Sound, was designated by the Washington State Legislature in 1987 to protect a large, intact complex of nearshore habitats and related biological communities, and to provide opportunities for low-impact public use and environmental education for the people of Washington. The site includes the former Weyerhaeuser South Bay Log Dump, which operated from the 1920s until the 1980s. The remnant structures from the log dump, including several hundred creosoted pilings, and a trestle and pier, continue to negatively impact nearshore ecosystems protected by the conservation area. Therefore, the WA DNR has proposed to remove these dilapidated structures to enhance the processes, functions, and structures of the nearshore ecosystems. However, a few of the remnant log booms from dumping operations have supported a healthy population of harbor seals for more than 30 years by providing haulout habitat. However, seals concentrate themselves and primarily haul out at only two locations within the NRCA (see Figure 4 in application).

The proposed project involves the removal of 615 creosote treated wood pilings and overwater creosoted structures (*i.e.,* a trestle and pier superstructure) that are not associated with the booms seals use as a haulout (*i.e.,* not within 30 yards (27 m) of the booms). Pile and structure removal would be accomplished using vibratory extraction, direct pull, and/or diver cutting techniques. The vibratory hammer is a large steel device suspended by a cable from a crane that is stationed on a barge adjacent to the piling. The pile is then lifted out of the water and placed on a barge.

Approximately 615 12–24 inch diameter pilings would be removed near but not directly adjacent to haulouts. An average of 30 pilings removed per day would be removed via vibratory hammer extraction methods. Typically the hammer vibrates for less than one minute per pile, so there would be no more than 30 minutes of hammer vibration over an 8-hour period. After

vibration, a choker is used to lift the pile out of the water where it is placed on the barge for transport to an approved disposal site. If a pile breaks during extraction, ideally it would do so below the mudline; however, if a pile is broken above the water line, then a choker is set on the broken pile and a diver cuts the pile at the mud line with a chain saw so that it may be brought up to the barge by crane. Operations would begin on the pilings and structures that are furthest from the seal haul-out so that there is an opportunity for the seals to adjust to the presence of the contractors and their equipment. Actual vibratory extraction operations could occur for approximately 21 days over the 4-month work window (November 1 and February 28). Other work days would be spent removing pilings associated with the trestle, which is over 850 m from the haulout, and pier superstructure, which does not involve vibratory extraction. NMFS anticipates that the presence of crew and use of a vibratory hammer would result in behavioral harassment.

The portion of the Chapman Bay Pier that would be removed is more than 100 yards (91 m) from the closest haul-out area. This activity is expected to take a maximum of 10 days and, although does not involve vibratory extraction, has the potential to result in behavioral harassment due to the close proximity to working crew. In contrast, the Woodard Bay trestle is located on the other side of a peninsula that separates Woodard and Chapman Bays and is a distance of more than 850 yards (777 m) from the closest haulout area. Work here is expected to take a maximum of 10 days to complete. Because of the distance from the haul-outs, the WA DNR anticipates structure removal at the Woodard Bay trestle would not disturb the seals. As such, 10 out of the 40 work days are not expected to result in harbor seal harassment.

Approximately 25 purple martin nest boxes would be relocated from the removed piles to the pilings that support or surround the haul-out area. This activity would only require a battery powered drill, is expected to take 2 days, and could also result in flushing the seals from the haulout. Crew would be required to complete this activity during the days when they are already working within 100 yards (91 m) of the haulout, possibly using a separate boat, so that no additional work days near the haulout are necessary. Presence of crew relocating nest boxes may result in behavioral harassment of seals. However, because this would be completed in tandem with pile removal, no substantial additional harassment is anticipated.

There is a paucity of data on airborne and underwater noise levels associated with vibratory hammer extraction. As background, in-air noise levels are referenced to 20 microPascals (re: 20 microPa) while underwater noise levels are referenced to one microPascal (re: 1 microPa). Based on information on airborne source levels measured for vibratory hammer steel and concrete pile driving, removal of wood piles is unlikely to exceed 90 dB_{rms} re: 20 microPa (pers. comm., Miner-Zukerberg, 2010). The DNR and NMFS could not find hydroacoustic data on vibratory extraction of wood piles; however, it can be assumed that this activity does not result in SPLs above vibratory hammering. However, data is also lacking on vibratory hammering wood piles. NMFS could only find data on driving timber piles using an impact hammer and vibratory driving non-timber piles. For example, the California Department of Transportation (Caltrans) indicates impact driving 12- or 14-inch wood piles typically emits peak source levels of 177 dB re: 1 microPa (Caltrans, 2009). Vibratory pile driving 12–24 inch steel piles typically results in SPLs around 155–165 dB re: 1 microPa (root mean square) ten meters from the source (Caltrans, 2007). It should be noted driving steel piles likely results in higher SPLs than driving wood piles. Similarly, it is generally assumed that vibratory extraction emits lower SPLs than impact hammering wood piles or vibratory pile driving steel piles.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the only marine mammal found within the action area. Harbor seals within the Woodard Bay NRCA belong to the Washington Inland Waters stock, which was estimated around 14,612 individuals in 2003 (NMFS, 2003). Although the stock assessment report for this stock has not been updated since 2003, based on trends of other harbor seal stocks, this is likely an underestimate. Based on the analyses of Jeffries *et al.* (2003) and Brown *et al.* (2005), both the Washington and Oregon coastal harbor seal stock have reached carrying capacity and are no longer increasing. Harbor seals are not listed as depleted under the MMPA or as endangered or threatened under the ESA. They are considered the most abundant resident pinniped species in Puget Sound (Lance and Jeffries, 2009).

Harbor seals haul out on rocks, reefs, beaches, and drifting glacial ice and feed in marine, estuarine, and occasionally fresh waters. Harbor seals generally are non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction. They display strong fidelity for haulout sites (Pitcher and Calkins, 1979; Pitcher and McAllister, 1981). The remnant log booms at the Woodard Bay NRCA support a year-round population of harbor seals, which use the boom structures for haulout habitat to rest, pup, and molt in two primary locations; to the east and to the north of the Chapman Bay Pier (see Figure 4 in application). Haulout behavior is shown to be affected by time of day and tide cycle, as well as seasonal and weather patterns such as air temperature, wind speed, cloud cover, and sea conditions (Buettner *et al.,* 2008). Annually, use of the log booms peaks from July, when females haul out to give birth to their pups, through October, during the late pupping season and molt (WA DNR, 2002).

The harbor seal population within the NRCA is considered one of the healthier ones in southern Puget Sound. Seal numbers have been monitored at the site since 1977, when there were less than 50 seals. In 1996, the highest count year, there were 600 seals. The average maximum annual count between 1977 and 2008 was 315 seals with 410 counted in August of 2008 (Buettner *et al.,* 2008).

Pinnipeds produce a wide range of social signals, most occurring at relatively low frequencies (Southall *et al.,* 2007), suggesting that hearing is keenest at these frequencies. Pinnipeds communicate acoustically both on land and in the water, but have different hearing capabilities dependent upon the medium (air or water). Based on numerous studies, as summarized in Southall *et al.* (2007), pinnipeds are more sensitive to a broader range of sound frequencies underwater than in air. Underwater, pinnipeds can hear frequencies from 75 Hz to 75 kHz. In air, the lower limit remains at 75 Hz but the highest audible frequencies are only around 30 kHz (Southall *et al.,* 2007).

Potential Effects on Marine Mammals

The WA DNR and other organizations, such as the Cascadia Research Collective, have been monitoring the behavior of harbor seals present within the action area since 1977. Past disturbance observations at Woodard Bay NRCA have shown that seal harassment occurs from non-motorized boats (*e.g.,* recreational kayaks and canoes), motorized vessels (*e.g.,* fishing boats), and people walking by the haulout (Calambokidis and Leathery, 1991; Buettner *et al.,* 2008). Calambokidis and Leathery (1991)

found that the mean distance that seals entered the water in response to any type of vessel was 56 m. Most commonly seals were disturbed when vessels were 26 to 50 m from the haulout; however, only above 125 m was there a sharp decrease in the proportion of groups disturbed. Seals entered the water in response to people on foot at up to 256 m although, on many occasions, people were able to pass less than 100 m from seals, while maintaining a low profile without causing disturbance (Calambokidis and Leathery, 1991). Furthermore, the distances that seals were disturbed varied significantly by vessel type; seals entered the water at a greater distance in response to kayaks and canoes compared to recreational motorboats and skiffs. It is hypothesized that because motor boats are more readily detectable than non-motorized boats, seals are more aware of their presence at greater distances and do not react (Buettner *et al.,* 2008). Buettner *et al.* (2008) reported the research boat used during their study caused the greatest amount of harbor seal disturbance reactions with the second and third highest causes being canoes and kayaks, respectively. The scientists theorized the most plausible reason for this is that the boats used for research came within the closest distance to the seals, often within 1 m of the floats where seals were hauled out.

Buettner *et al.* (2008) also noted the difference in vigilance of seals based on float location during pupping season. For example, seals on floats located on the outer edges of the log boom area, and thus subjected to greater amounts of vessel traffic, were indifferent to vessels unless they came right up to the log booms. Contrarily, seals on the floats located in the central area of the log booms, and hence not exposed to as much traffic, were more vigilant and more sensitive to disturbances. Not surprisingly, the inner floats contained the highest amount of pups. The DNR would conduct the habitat restoration project from November to February, well outside of the pupping (and molting) season; therefore no impacts to seals during these biologically important time periods.

The two studies discussed above indicate that seals are susceptible to anthropogenic disturbance but also may habituate to such disturbances. During emergency maintenance operations on the haulout in 2008, the seals present on the log booms flushed when the maintenance boat first entered the haulout area but quickly became accustomed to the contractor and the boat and would rest on the haulout during maintenance operations (pers. comm., Osborne-Zukerberg, 2008). Maintenance operations included bringing in log booms to restore habitat and included drilling through booms on a small barge. Seals initially flushed in response to onset of work but quickly acclimated to crew presence and would haulout on adjacent booms directly adjacent to the small barge used during maintenance (pers. comm., Zukerberg-Daly, June, 2010). Furthermore, Suryan and Harvey (1991) found that harbor seals hauled-out at Puffin Island, WA, were more tolerant to subsequent harassments than they were to the initial harassment. However, sudden presence of a disturbance source (*e.g.,* kayaker) can induce strong behavioral reactions.

To avoid inducing strong reactions, the WA DNR would conduct activities such that the piles farthest from the hauled out seals would be removed first; thereby avoiding a sudden disturbance and allowing seals time to acclimate to human activity. This would maximize the initial distance between maintenance crews and seals. The DNR believes that throughout the day, seals will become accustomed to crew presence of construction activities, as seen in previous disturbance studies within the Woodard Bay NRCA and other harbor seal populations.

In addition to crew and vessel presence, hammer operations may disturb seals in-water; however, it is anticipated that most seals would be disturbed initially by physical presence. As discussed above, the DNR and NMFS could not find information on sound levels produced by timber pile extraction using a vibratory hammer; however, it is reasonable to assume that extraction would not result in higher SPLs than vibratory hammering. That is, NMFS anticipates that source levels in water would not reach 155–165 dB (the average source SPL for driving 12–24 inch steel piles). NMFS' general in-water harassment thresholds for pinnipeds exposed to non-pulse noise, such as those produced by vibratory pile extraction, are 190 dB rms re: 1 microPa as the potential onset of Level A (injurious) harassment and 120 dB rms re: 1 microPa at the potential onset of Level B (behavioral) harassment. These levels are considered precautionary and NMFS is currently revising these thresholds to better reflect the most recent scientific data. Vibratory extraction would not result in sound levels near 190 dB re: 1 microPa; therefore, injury would not occur. However, noise from vibratory extraction would exceed 120 dB re: 1 microPa near the source and may induce responses in-water such as avoidance or alteration of behavioral states at time of exposure.

There are limited data available on the effects of non-pulse noise on pinnipeds in-water; however, field and captive studies to date collectively suggest that pinnipeds do not strongly react to exposures between 90–140 dB re: 1 microPa; no data exist from exposures at higher levels (Southall *et al.,* 2007). Jacobs and Terhune (2002) observed wild harbor seal reactions to high frequency acoustic harassment devices (ADH) around nine sites. Seals came within 44 m of the active ADH and failed to demonstrate any behavioral response when received SPLs were estimated at 120–130 dB re: 1 microPa. In a captive study (Kastelein, 2006), a group of seals were collectively subjected to data collection and communication network (ACME) non-pulse sounds at 8–16 kHz. Exposures between 80–107 dB re: 1 microPa did not induce strong behavioral responses; however, a single observation at 100–110 dB re: 1 microPa indicated an avoidance response at this level. The group returned to baseline conditions shortly following exposure. Southall *et al.* (2007) notes contextual differences between these two studies noting that the captive animals were not reinforced with food for remaining in the noise fields, whereas free-ranging subjects may have been more tolerant of exposures because of motivation to return to a safe location or approach enclosures holding prey items.

Hearing Impairment

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very loud sounds. Hearing impairment is measured in two forms: temporary threshold shift (TTS) and permanent threshold shift (PTS). PTS is considered injurious whereas TTS is not as it is temporary and hearing is fully recoverable. There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (*i.e.,* 40 dB of TTS). Due to the low source levels produced by vibratory extraction, NMFS does not expect that marine mammals will be exposed to levels that could elicit PTS; therefore, it will not be discussed further.

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during

exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be louder in order to be heard. TTS can last from minutes or hours to, in cases of strong TTS, days. For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals. Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS-onset. Because it is non-injurious, NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider onset TTS to be the lowest level at which Level B harassment may occur.

Harbor seals within the action area are considered resident and may therefore be continually exposed to habitat restoration activities (however, recall that the vibratory hammer need only operate for approximately 1 minute to extract each pile). Sound exposures that elicit TTS in pinnipeds underwater have been measured in harbor seals, California sea lions, and northern elephant seals for broadband or octaveband (OBN) non-pulse noise ranging from approximately 12 minutes to several hours (Kastak and Schusterman, 1996; Finneran *et al.,* 2003; Kastak *et al.,* 1999; Kastak *et al.,* 2005). Collectively, Kastak *et al.* (2005) analyzed these data to indicate that in the harbor seal, a TTS of *ca.* 6 dB occurred with 25 minute exposure to 2.5 kHz OBN with SPL of 152 dB re:1 microPa; the California sea lion showed TTS-onset at 174 dB re: 1 microPa (as summarized in Southall *et al.,* 2007). Source levels emitted by vibratory pile extraction are low, intermittent, and would occur for a total of only 30 minutes per day. Further, seals may leave the area upon onset on vibratory pile extraction thereby reducing exposure duration. For these reasons, NMFS does not anticipate TTS would be induced.

In summary, it is anticipated that seals would be initially disturbed by crew and vessels associated with the habitat restoration project; however, given the short duration and low energy of vibratory extraction, PTS would not occur and TTS is not likely. Those animals hauled out on the log booms would likely flush into the water; however, DNR would start with removal of piles farthest from the haulout. This methodology is designed to minimize disturbance as seals would have ample time to become alerted to and habituated to crew and vessel presence. As demonstrated in 2008, seals initially flushed into the water upon maintenance crew presence; however, quickly became accustomed to the contractor and the boat and would rest on the haul-out during maintenance operations. It is anticipated that harbor seals would react in a similar manner to pile and structure removal operations. For these reasons, harbor seals are not expected to abandon the haulout.

Anticipated Effects on Habitat

Marine mammal habitat would be temporarily ensonified by low sound levels resulting from habitat restoration effort. The piles designated to be removed have been treated with creosote, a wood preservative that is also toxic to the environment. Removing these piles will have beneficial impacts to the NRCA, including marine mammal habitat, by preventing the leaching of creosote chemicals, including polycyclic aromatic hydrocarbons, into the marine environment. No log booms would be removed; therefore, no impacts to the physical availability of haulout structure would occur.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The DNR has proposed mitigation measures designed to minimize disturbance to harbor seals within the action area in consideration of timing, location, and equipment use. Foremost, pile and structure removal would only occur between November and February, well outside harbor seal pupping and molting seasons. Therefore, no impacts to pups from the specified activity during these sensitive time periods would occur. The DNR would approach the action area slowly to alert seals to their presence from a distance and would begin pulling piles at the farthest location from the log booms used as harbor seal haulout areas. The contractor would be required to survey the operational area for seals before initiating activities, including cutting and removing pilings and structures, and to wait until the seals are at a sufficient distance from the activity so as to minimize the risk of direct injury from the piling or structure breaking free or equipment. DNR would also require the contractor to initiate a vibratory hammer "soft start" at the beginning of each work day. The "soft-start" method includes a reduced energy vibration from the hammer for the first 15 seconds and then a one minute waiting period. This method would be repeated twice before commencing with regular energy operations. Finally, the vibratory hammer power pack would be outfitted with a muffler to reduce in-air noise levels.

NMFS has carefully evaluated the applicant's proposed mitigation measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Seal monitoring and research has been occurring at Woodard Bay since the 1970s and has included seal

ecology, population dynamics and disturbance behavior (Newby, 1970; Calambokidis *et al.,* 1991; Buettner *et al.,* 2008; Lambourn *et al.,* 2009). DNR's proposed monitoring plan adheres to protocols already established for Woodard Bay to the maximum extent practical for the specified activity. Monitoring of both haul-outs would be performed by at least one NMFS approved protected species observer (PSO) the first 2 days of project activities when the contractors are mobilizing and starting the vibratory hammer, during the 2 days when activities are occurring within 100 yards (91 m) of the haulout area, during five of the days of work on the Chapman Bay Pier, and for six other days during the 40-day work period to be decided when the project schedule is provided by the contractor. Therefore, there would be at least 15 days where a designated observer would be on site over the course of 40 days of work. The PSO would be onset prior to crew and vessel arrival to determine the number of seals present pre-disturbance. The PSO would maintain a low profile during this time to minimize disturbance from monitoring.

Observational data collected would include monitoring dates, times and conditions, estimated number of take, which would be recorded as number of seals flushed from the haulout, and type of activity occurring at time of disturbance. This information would be determined by recording the number of seals using the haulout on each monitoring day prior to the start of restoration activities for that day and recording the number of seals that flush from the haulout or, for animals already in the water, display adverse behavioral reactions to vibratory extraction. A description of the disturbance source, the proximity in meters of the disturbance source, and reactions would also be noted. Within 30 days of the completion of the project, DNR would submit a monitoring report to NMFS that would include a summary of findings and copies of field data sheets and relevant daily logs from the contractor.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

During previous surveys, seal counts for the month of October, the last month that data is recorded each year, averaged 171 and ranged between 209 and 275 from 2006 to 2009 (Lambourn, 2010). Although the number of seals is expected to decline from October through February when restoration actions are scheduled to occur, there is no data for these months so the DNR considered a maximum of 275 seals could potentially be affected by the project per day. The DNR has proposed that Woodard Bay trestle removal operations are not expected to harass marine mammals as the trestle is located approximately 850 yards (777 m) from the closest haulout and vibratory extraction does not emit loud noise into the marine environment. Therefore, days spent removing the trestle have been removed from take calculations. In addition, the DNR has proposed that removal of pilings located at greater than 100 yards (91 m) from the harbor seal haulout would not result in harassment as NMFS has indicated that people at Woodard Bay should remain 100 yards from the seals to prevent disturbance. Therefore, the DNR is estimating only nine days of pile removal would result in harassment to seals within the action area. Seals may be behaviorally disturbed due to crew presence of pile removal operations. Given the maximum of 275 animals on a haulout at any given day, the DNR is requesting authorization to take, by Level B harassment, 2,475 seals (275 x 9) during the habitat restoration project with the inference that the individual number of seals harassed will be low but may be taken multiple times. Although NMFS does not discount that harassment from pile structure removal could occur at distances greater than 100 yards from work location, the conservative estimate of 275 seals present on the haulout per day is ample buffer to consider the amount of requested take reasonable.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a number of factors associated with the proposed action and affected species and stocks including, but not limited to, the number of anticipated mortalities; number and nature of anticipated injuries; number, nature, intensity, and duration of Level B harassment; and temporal and spatial scale of the proposed action with respect to the ecology and life history of potentially affected marine mammals (*e.g.,* would harassment occur on prime foraging grounds, during critical reproductive times, etc.).

For reasons described above, there is no potential for injury or mortality to occur from the specified activity; therefore, none is anticipated. However, there is potential for seals to behaviorally react (*e.g.,* as flush, avoid the area) in response to the presence of crew and equipment and vibratory extraction noise. The DNR would not conduct habitat restoration operations during the pupping and molting season; therefore, no pups would be affected by the proposed action and no impacts to any seals would occur as a result of the specified activity during these sensitive time periods. Harbor seals are not listed as endangered under the ESA or depleted under the MMPA (NMFS, 2003).

Mitigation measures (*e.g.* beginning work at the farthest distance to the haulout as possible, use of a muffler pack, *etc.*) would minimize onset of sudden, acute reactions and overall disturbance. In addition, it is not likely that seals at both haulouts would be disturbed simultaneously as work, for example, may affect the southern haulout but not the northern haulout based on location of the crew and barge. The DNR estimates work at any given location may take approximately 10 days; therefore, seals on those haulouts may be taken for 10 consecutive days or they may move to the other haulout farther from where work is taken place. Further, although seals may initially flush into the water, based on previous disturbance studies and maintenance activity at the haulouts, the DNR expects seals will quickly habituate to piling and structure removal operations. For these reasons no long term or permanent abandonment of the haulout is anticipated.

The seals at Woodard Bay are considered resident and make small daily movements to forage; however, exactly how far they transit is unknown. The mean count of the localized seal population from 1977–2008 was 315 animals during the pupping season with a maximum of 400 individuals counted in 2008 during this time. However, as described above, these numbers drop over the late fall and winter. The DNR has scheduled the project to occur from November–February, a time outside of

sensitive reproductive periods and during a time seal numbers are lowest. The DNR is requesting to take approximately 275 seals multiple times; therefore, the proposed authorized amount of take can be considered small when compared to the stock size of harbor seals within Woodard Bay (14,612).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that piling and structure removal associated with the WA DNR's habitat restoration project will result in the incidental take of small numbers of marine mammals by Level B harassment only, and that the total taking from the specified activity would have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

No marine mammals listed under the ESA occur within the action area. Therefore, Section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment analyzing environmental impacts associated with the issuance of an IHA to WA DNR authorizing the incidental take of marine mammals from pile and structure removal within the Woodard Bay NRCA. Because the EA is specific to NMFS' action of issuing an IHA, any comments received in response to this notice would also influence development of the EA. The EA would be finalized prior to issuing an IHA to the DNR.

Dated: August 6, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 10–40]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–40 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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