

designated certain lands and waters of the St. Louis River freshwater estuary in Wisconsin as the Lake Superior National Estuarine Research Reserve.

On October 19, 2010, Under Secretary of Commerce for Oceans and Atmosphere Dr. Jane Lubchenco signed a record of decision pursuant to the National Environmental Policy Act and a findings of designation for the Lake Superior National Estuarine Research Reserve in Wisconsin pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. Section 1461, and its implementing regulations at 15 CFR Part 921. The Reserve duly received certification from the State of Wisconsin Coastal Program that Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

**FOR FURTHER INFORMATION CONTACT:** Laurie McGilvray (301) 713-3155 x158, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM5, Silver Spring, MD 20910. A copy of the Record of Decision for each Reserve is available upon request.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves.

Dated: October 22, 2010.

**Donna Wieting,**

*Director, Office of Ocean and Coastal Resource Management.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RIN 0648-XZ78]

#### 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; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA), as

amended, notification is hereby given that 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) has been issued to the Washington State Department of Natural Resources (DNR).

**DATES:** This authorization is effective from November 1, 2010–February 28, 2011.

**ADDRESSES:** A copy of the application, IHA, and a list of references used in this document may be obtained by writing to P. 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, by telephoning the contact listed here, or visiting NMFS Web site at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 713-2289.

#### 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 will be removed by vibratory hammer extraction methods and structures will be removed via cable lifting. In addition, approximately 25 nest boxes for purple martins will be relocated from removed pilings to pilings that are retained for seal habitat and buffer, using a small boat if necessary and will require a battery powered drill.

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. Since the activity has the potential to take marine mammals, a marine mammal take authorization under the MMPA is warranted.

#### 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 DNR will remove these dilapidated structures to enhance the processes, functions, and structures of the nearshore ecosystems. 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).

Approximately 615 (average 12 inch diameter) pilings will be removed near but not directly adjacent to haulouts. An average of 30 pilings per day will be removed via vibratory hammer extraction methods. Operations will 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. In addition, no pilings within 30 yards (27 m) of booms used as seal haulout habitat will be removed. The DNR estimates it will take approximately 1 minute to vibrate the piling free from the substrate, after which a crane will be used to lift the pile out of the water. Therefore, the vibratory hammer will operate for only 30 intermittent minutes daily. Vibratory extraction operations will occur for approximately 21 days over the 4-month work window (November 1 and February 28). Other work days will be spent removing pilings associated with the trestle, which is over 850 m from the closest haulout, and pier superstructure, which does not involve vibratory extraction. A complete description of the specified activity can be found in the proposed IHA notice for this action (75 FR 48941; August 12, 2010).

Approximately 25 purple martin nest boxes will be relocated from the removed piles to the pilings that support or surround the haul-out area. This activity will only require a battery powered drill, is expected to take 2 days, and could also result in flushing the seals from the haulout. Crew will 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 will be completed in tandem with pile removal, no substantial additional harassment is anticipated.

### Comments and Responses

A notice of receipt and request for public comment on the **Federal Register** notice of proposed authorization was published on August 12, 2010 (75 FR 48941). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) on the proposed IHA. No comments were received by any other members of the public.

*Comment 1:* The Commission recommended that NMFS require that the applicant provide consistent monitoring beginning 30 minutes before all daily activities are initiated and ending 30 minute after all daily activities cease.

*Response:* NMFS does not agree that monitoring need be conducted at all times during this low-level activity as there is no potential serious injury or mortality and the probability of an animal being physically injured from the equipment is extremely low if not discountable. In addition, no other marine mammal species are present within the action area, and are therefore not likely to be affected by DNR's activities. Marine mammal monitoring will be required at the start of the project, twice a week when pile removal is occurring within 100 yards of the haul out area, for two days when activities move to a new location within the NRCA, during five of the days of work on the Chapman Bay Pier, and for at least six other days during the 40 day work period to be decided when the project schedule is provided by the contractor. Similar to scientific research studies, when correcting for effort, the DNR and NMFS should be able to adequately determine the number of animals taken and impacts of the project on marine mammals based on the monitoring plan. Should extreme reactions of seals occur (e.g., abandonment of the haulout) at any time during the project, DNR will stop removal activities and consult with NMFS. However, as described in the proposed IHA notice, based on previous scientific disturbance studies at NRCA, extreme reactions are not anticipated.

*Comment 2:* The Commission recommended that NMFS require the applicant to measure sound pressure

levels associated with vibratory extraction to ensure source levels do not have the potential to cause injury.

*Response:* There are no known acoustic data available on source levels for timber pile extraction using a vibratory hammer. Based on discussion later in this document (see Effects on Marine Mammals), NMFS is confident that sound produced by the vibratory extraction of derelict timber piles will not approach 190 dB re: 1 microPa (rms), the threshold for Level A (injurious) harassment of pinnipeds. As such, NMFS is not requiring a sound verification study be conducted.

*Comment 3:* The Commission recommended that NMFS condition the IHA to give the protected species observer (PSO) the authority to shut down the proposed activity if he or she believes that a seal is at risk from direct strike.

*Response:* Vibratory pile removal is a technique that does not require "strikes", as stated in the Commission's comment. 'Striking' is associated with impact pile driving; however, PSOs and equipment operators will be alert to any potential marine mammal strike from equipment use in general. Should the PSO determine that seals could become injured via this form of strike (which would require an extremely close approach by an animal), he or she is responsible for alerting the equipment operator to the potential close approach. The operator is then required to shut-down the equipment as necessary to avoid direct strike. The DNR will instruct the hammer operator to abide by the PSO's recommendations. In addition, no activity will be initiated until or unless seals are at a sufficient distance (i.e., 50 feet (15 m)) from the activity so as to minimize the risk of direct injury from the equipment, piling or structure breaking free or from equipment. In summary, PSOs will have the authority to instruct operators to shut equipment down in the event that a seal is at risk from direct strike by equipment; however, due to the implementation of proposed mitigation measures this is an extremely remote possibility.

*Comment 4:* The Commission recommended that NMFS continue to require ramp-up or soft-starts.

*Response:* As described in the proposed IHA notice, DNR is required to initiate soft-starts at the onset of pile removal if the hammer has the capability to do so.

### 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 likely 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).

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). Seal numbers peak during the pupping season and decline in the winter (when work will be conducted). A complete description of harbor seal behavior and habitat use within the NRCA can be found in the proposed IHA notice for this action (75 FR 48941; August 12, 2010).

#### Effects on Marine Mammals

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 *et al.*, 1991; Buettner *et al.*, 2008). Results of these studies are described in the proposed IHA notice for this action. Based on these studies, NMFS anticipates that the presence of crew and use of a vibratory hammer will result in behavioral harassment, primarily flushing off log booms, avoiding the area, or similar short-term behavioral disturbance.

The portion of the Chapman Bay Pier that will 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 pier's proximity to the haulout. 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 will not disturb the seals. As such, 10 out of the 40 work days are not expected to result in harbor seal harassment.

Though disturbance of harbor seals is expected to occur primarily through physical presence (*i.e.*, crew and vessel presence in vicinity of harbor seals), hammer operations may disturb seals in-water. 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 as 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.

In general, there is a paucity of data on airborne and underwater noise levels associated with pile extraction, and there is no known information on sound levels produced by vibratory extraction of derelict timber piles (as opposed to steel piles used temporarily). In addition, there is little data on the vibratory driving of timber piles, primarily because it is a seldom-used technique. Though it is reasonable to assume that vibratory extraction of timber piles would be somewhat quieter than vibratory driving of timber piles of the same size, NMFS will not make this assumption in the absence of data. The California Department of Transportation (Caltrans) has published data showing that vibratory pile driving of 12–24 inch steel piles typically results in sound pressure levels (SPLs) around 155–165 dB re: 1 microPa (root mean square) ten meters from the source (Caltrans, 2007). Driving of steel piles is typically considered to produce higher SPLs than driving timber piles. As such, NMFS anticipates that in-water source levels for vibratory driving of timber piles would not exceed 165 dB (the maximum source SPL for driving 12–24 inch steel piles). Considering that (a) vibratory driving of 12–24 inch timber piles would not produce SPLs in excess of 165 dB; (b) vibratory extraction may produce lower SPLs than vibratory driving, and would not produce higher SPLs; and (c) the piles to be extracted are approximately 12 inches in diameter (the low end of the size range that produced the 165 dB estimate for vibratory driving of timber piles), NMFS

concludes conservatively that vibratory extraction will not result in sound levels near or above 190 dB re: 1 microPa. Therefore, injury will not occur, though noise from vibratory extraction will likely 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. Recall that the hammer would only operate for approximately 1 min to break the pile free from the substrate, after which the hammer would stop and a crane would remove the pile from the water. Therefore, seals will not be exposed to extended in-water noise.

#### 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  $\geq 40$  dB (*i.e.*, 40 dB of TTS). Due to the low source levels produced by vibratory extraction and short duration of vibration (1 min), marine mammals will not 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. 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 (likely below 155 dB) and would only occur for approximately 1 minute before stopping. The studies referenced above indicate that sound pressure levels at similar levels must be continuous to induce TTS. Furthermore, the studies above exposed animals to sounds with frequency ranges closer to their peak hearing frequency whereas

vibratory hammers produce low frequency sounds, towards the lower end of seal hearing capabilities and therefore they must be louder in order to be heard. For these reasons, NMFS does not anticipate TTS will be induced.

In summary, it is anticipated that seals will 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 will not occur and TTS is not likely. Those animals hauled out on the log booms will likely flush into the water. To avoid inducing strong reactions, the DNR will conduct activities such that the piles farthest from the hauled out seals will be removed first; thereby avoiding a sudden disturbance and allowing seals time to acclimate to human activity. The DNR will also not remove piles within 30 yards (27 m) of haulouts, avoiding extreme close approaches. Throughout the day, seals are expected to become accustomed to crew presence of construction activities, as seen in previous disturbance studies within the Woodard Bay NRCA and other harbor seal populations. For these reasons, harbor seals are not expected to abandon the haulout or demonstrate extreme behaviors in response to crew and habitat restoration activities.

#### **Anticipated Effects on Habitat**

Marine mammal habitat will 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 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 will be removed; therefore, no impacts to the physical availability of haulout structure will occur.

#### **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 will only occur between November and February, well outside harbor seal pupping and molting seasons. Therefore, no impacts from the specified activity during these sensitive time periods will occur. The DNR will approach the action area slowly to alert seals to their presence from a distance and will begin pulling piles at the farthest location from the log booms used as harbor seal haulout areas. Piling directly associated with harbor seal haulouts (*i.e.*, those within 30 yards (27 m) of the booms) will not be removed. The contractor will be required to survey the operational area for seals before initiating activities and to wait until the seals are at a sufficient distance (*i.e.*, 50 ft (15 m)) from the activity so as to minimize the risk of direct injury from the piling or structure breaking free or from equipment. The DNR will 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 will be repeated twice before commencing with regular energy operations. Finally, the vibratory hammer power pack will 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.

### 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.

Harbor seal research has been conducted at Woodard Bay since the 1970's and has included seal ecology, population dynamics and disturbance behavior (Newby, 1970; Calambokidis *et al.*, 1991; Buettnner *et al.*, 2008; Lambourn *et al.*, 2009). The DNR's monitoring plan adheres to protocols already established for Woodard Bay research and, in coordination with NMFS, has been tailored for the specified activity. Monitoring of both haul-outs will be performed by at least one NMFS approved protected species observer (PSOs), who will monitor the haulouts the first two days of the project, when the contractors are mobilizing to a new location, during two days of every week when activities are occurring within 100 yards of the haul out area, during five of the days of work on the Chapman Bay Pier, and for at least six other days during the 40 day work period to be decided when the project schedule is provided by the contractor. Therefore, there will be at least 15 days where a designated observer will be on site over the course of 40 days of work. The PSO will be onsite prior to crew and vessel arrival to determine the number of seals present pre-disturbance. The PSO will maintain a low profile during this time to minimize disturbance from monitoring.

Observational data collected will include monitoring dates, times and conditions, estimated number of take, which will be recorded as number of seals flushed from the haulout, and type of activity occurring at time of disturbance. This information will be determined by recording the number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day, 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 will be noted. Within 90 days of the completion of the project, DNR will submit a monitoring report to NMFS that will 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 (and closest to the months when the project will be carried out) that data is recorded each year, averaged 171 and ranged between 79 and 275 individuals from 2006 to 2009 (Lambourn, 2010). Although there is no data for the months from November through February, when the project is scheduled to take place, the number of seals is expected to decline during these months, as compared with the summer/fall pupping season. Additionally, the seal counts for the month of October, from 2006–2009, are an aggregate of both haul-out sites from which seals may be disturbed. Given that the seals are likely to be relatively evenly split between the two haul-out sites, only a portion of the seals present on any given day would be subject to Level B harassment (*i.e.*, those seals present at the haul-out closest to the area where work is occurring). Therefore, the DNR rejected the use of the most conservative approach to take estimation (using the maximum of 275 seals), and used a more moderate approach (using the mean number of 171 seals). Using this moderate approach, the DNR considers that 171 seals could potentially be affected by the project per day. 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. 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 will 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 will result in harassment to seals within the action area. Seals may be disturbed due to crew presence of pile removal operations. Given the mean of 171 animals on a haulout at any given day, the DNR is authorized to take, by Level B harassment, 1539 seals ( $171 \times 9$ ) during the habitat restoration project with the inference that the individual number of seals harassed will be low but may be taken multiple times. This take estimation reflects a change in methodology from that presented in the **Federal Register** notice of proposed authorization (75 FR 48941, August 12, 2010). In that document, the DNR proposed to use the more conservative methodology for take estimation (*i.e.*,  $275 \times 9$ ); however, for reasons discussed previously in this section, the DNR has determined a more moderate approach to take estimation is appropriate.

### 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.*, will harassment occur on prime foraging grounds, during critical reproductive times, *etc.*).

For reasons described previously in this document, there is no potential for serious injury or mortality from the specified activity. Further, although the potential for injury could be discountable to begin with, mitigation and monitoring measures will ensure seals are not physically injured from equipment (auditory injury is not possible due to low source levels and intermittent hammer operation). However, it is likely seals will react to the presence of crew and equipment and vibratory extraction noise (*e.g.*, by flushing, avoiding the area). The DNR will not conduct habitat restoration

operations during the pupping and molting season; therefore, no pups will be affected by the proposed action and no impacts to any seals will occur as a result of the specified activity during these sensitive time periods. Mitigation measures (e.g. beginning work at the farthest distance to the haulout as possible, use of a muffler pack, etc.) will minimize onset of sudden, acute reactions and overall disturbance during project activities. In addition, it is not likely that seals at multiple haulouts will 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. 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 authorized to take approximately 171 seals multiple times. The number of individual seals harassed may be considered small (10.5%) when compared to the Inland Washington stock size (n=14,612). The fact that only temporary Level B, or behavioral, harassment would occur, and that the activity has been scheduled outside of sensitive reproduction periods, ensures that the least practicable adverse impact will occur.

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 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 will 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); thus, there will not be an unmitigable adverse impact on the availability for taking marine mammals for subsistence uses.

No marine mammals listed under the ESA have the potential to be taken incidental to the proposed action as none occur within the action area. Therefore, Section 7 consultation under the ESA is not required.

### National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS has prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to pinnipeds and other applicable environmental resources resulting from issuance of the IHA. On October 27, 2010, NMFS issued a Finding of No Significant Impact on the EA.

Dated: October 29, 2010.

**James H. Lecky,**

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

[FR Doc. 2010–27883 Filed 11–3–10; 8:45 am]

**BILLING CODE 3510–22–P**

### DEFENSE NUCLEAR FACILITIES SAFETY BOARD

#### Extension of Time To Supplement Hearing Record

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Extension of time to supplement hearing record.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (Board) published a document in the **Federal Register** of July 26, 2010, (75 FR 43495), as amended, (75 FR 56080), concerning notice of a public hearing and meeting on October 7 and 8, 2010, with regard to the safety-related aspects of the design and construction of the Department of Energy's Waste Treatment and Immobilization Plant at the Hanford Site. The Board stated in that notice that the Board would hold the hearing record open until November 7, 2010, for the receipt of additional materials. The Board made the same

representation at the conclusion of the hearing on October 8, 2010.

**Extension of Time:** The Board now extends the period of time for which the hearing record will remain open an additional sixty (60) days until January 6, 2011. The Board has become aware of information which indicates that the public interest will be best served by extending the deadline for submission of materials into the hearing record. The Board will consider any such additional material in the course of evaluating its response to information collected at the hearing.

**Contact Person for More Information:** Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 1, 2010.

**Peter S. Winokur,**

*Chairman.*

[FR Doc. 2010–27900 Filed 11–3–10; 8:45 am]

**BILLING CODE 3670–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Meeting of the Chief of Naval Operations Executive Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of Partially Closed Meeting.

**SUMMARY:** The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations of the Latin America and the Caribbean, 2010 Subcommittee study. The meeting will consist of open and closed discussions. Closed discussions will include national and naval intelligence analysis, as well as consider major challenges which the United States will face over the next five years and implications of the regional security environment on the prospective role of U.S. naval forces. Open discussions will include the political, social and economic environment of Latin America and the Caribbean, focusing on crime (particularly narcotics trafficking), regional ethnic conflicts, and analysis of regional democratic processes. The discussion will concentrate on Central and South America and the Caribbean; considering issues also effecting Mexico as appropriate.

**DATES:** The meeting will be held on December 14, 2010, from 9 a.m. to 11:30 a.m. The session from 9 a.m.–10 a.m. will be open to the public; the session from 10 a.m.–11:30 a.m. will be closed to the public.