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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA743

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 the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Washington State Department of Natural Resources (DNR) to incidentally harass, by Level B harassment only, small numbers of harbor seals during restoration activities within the Woodard Bay Natural Resources Conservation Area (NRCA) in Washington.

DATES: This authorization is effective from November 1, 2011, through February 28, 2012.

ADDRESSES: A copy of the IHA and DNR's application and monitoring report are available by writing 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.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see FOR FURTHER INFORMATION CONTACT) or visiting the internet at:

http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications. Supplemental documents, including NMFS' Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act (NEPA), are available at the same site. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

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 authorize, 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 published in the Federal Register to provide public notice and initiate a 30-day comment period.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, requirements pertaining to the mitigation, monitoring, and reporting of such taking, and other means of effecting the least practicable adverse impact on the species or stock and its habitat. 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 U.S. citizens can apply for an authorization to incidentally take small numbers of marine mammals, by harassment only, as defined below. This provision mandates a 45-day time limit for NMFS' review of an application, followed by a 30-day public notice and comment period on a proposed authorization for the incidental harassment of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. If authorized, the IHA may be effective for a maximum of one year from the date of issuance.

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 July 1, 2011, NMFS received an application from the DNR requesting renewal of an IHA for the taking, by Level B harassment only, of small numbers of harbor seals (Phoca vitulina) incidental to activities conducted in association with a habitat restoration project within the Woodard Bay NRCA, Washington. Following NMFS review, DNR submitted an adequate and complete application on August 3, 2011. The DNR's habitat restoration project is a long-term effort to restore Woodard Bay habitat by removing or maintaining, as appropriate, derelict structures associated with a defunct log dump. DNR was first issued an IHA that was valid from November 1, 2010, through February 28, 2011 (75 FR 67951). The specified activity includes all

or part of the following actions, dependent on final funding levels: removal of 20,000 ft^2 (1,858 m^2) of pier superstructure and 400 creosoted timber pilings from Chapman Bay Pier and vicinity, and maintenance on 10,000 ft^2 (929 m^2) of Chapman Bay Pier to enhance bat roost habitat. Pilings will be removed by vibratory hammer extraction methods or by direct pull with cables. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane. Maintenance and enhancement of bat roost habitat will require the use of power tools and a generator. The proposed activities will occur during the designated in-water work window of November 1 through February 28 (2011-12), and are estimated to take approximately 40 days in total.

Description of the Specified Activity

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the Federal Register on September 12, 2011 (76 FR 56172). A complete description of the action was included in that notice and will not be reproduced here.

Proposed restoration activities requested under the IHA are funding dependent. They include all or part of the following:

- Removal of 20,000 ft^2 (1,858 m^2) of pier superstructure and 400 pilings from Chapman Bay Pier and vicinity.
- Maintenance on 10,000 ft^2 (929 m^2) of Chapman Bay Pier to enhance bat roost habitat.

Work will be accomplished using barges and skiffs. The pilings will be removed by vibratory hammer or by direct pull with cables; both methods are suspended from a barge-mounted crane. The vibratory hammer is a large steel device lowered on top of the pile, which then grips and vibrates the pile until it is loosened from the sediment. The pile is then pulled up

by the hammer and placed on a barge. For direct pull, a cable is set around the piling to grip and lift the pile from the sediment. The superstructure materials will be removed by excavator and/or cables suspended from a barge-mounted crane.

Approximately 400 12-24 in (0.3-0.6 m) diameter pilings will be removed near but not directly adjacent to haul-outs. Pilings associated with remnant log booms used by seals as haul-outs will not be removed. An approximate maximum of 60 pilings will be removed per day. The vibratory hammer typically vibrates for less than one minute per pile, so there will be no more than 60 non-consecutive 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. Pilings that cannot be removed by hammer or cable, or that break during extraction, will be recorded via global positioning system for divers to relocate for removal at the final phase of project activities.

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 contracted work crews and their equipment. Vibratory extraction operations are expected to occur for approximately 15 days over the course of the 4-month work window (November 1 through February 28). Other work days will be spent removing pier superstructure, which does not involve vibratory extraction. NMFS anticipates that the presence of crew and use of a vibratory hammer will result in behavioral harassment. Although the removal of Chapman Bay Pier superstructure does not involve vibratory extraction, it has the potential to result in behavioral harassment due to the close proximity of working crew to harbor seal haul-outs.

Maintenance and enhancement of bat roost habitat will include replacement of old stringers and installation of flashing and lumber to create optimal spacing and heat requirements

for the maternity roost. Equipment employed will include power tools and a generator. Presence of crew conducting enhancement of bat habitat on the pier may result in behavioral harassment through flushing of seals from the haul-out.

Comments and Responses

On September 12, 2011, NMFS published a notice of proposed IHA (76 FR 56172) in response to DNR's request to take marine mammals incidental to restoration activities and requested comments and information concerning that request. 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 recommends that NMFS require the DNR to monitor the presence and behavior of marine mammals during all proposed activities.

Response: NMFS and the DNR proposed that monitoring be conducted for a total of 15 days out of an estimated 40 days total work, as was the case for the monitoring plan implemented under the previous year's IHA. As it indicated in commenting on the previous year's IHA proposal, the Commission believes that this level of monitoring effort is not sufficient, and that monitoring should be conducted during 100 percent of restoration activity. The Commission states that because marine mammal reactions to different sources of disturbance are not always predictable, continuous monitoring is the only way to ensure that unexpected reactions are detected, documented, and evaluated. In support, the Commission gives as an example a scenario where monitoring does not coincide with the presence of marine mammals and vessels, thus resulting in observations that may not be indicative of actual impacts and underestimation of the total number of takes. While it is true that marine mammal reactions to a given stimulus are not always predictable, the scenario given by the Commission in support is not realistic. The 15

monitoring days are not selected haphazardly, but are chosen such that days of heightened activity are monitored, while the remainder is days that are representative of typical levels of activity. Further, while dedicated observers are not present during the non-monitored days, construction personnel and DNR staff are on-site. As reported anecdotally, no significantly deviant behavior or numbers of harbor seals were observed on non-monitored days during the previous year's IHA. As such, the estimated number of total takes, extrapolated from the 14 monitored days to the total 35 work days, likely represents an overestimate because the days with heaviest activity were monitored.

As described in the IHA proposal and in this document, the 15 days will include: (1) the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer; (2) 5 days when activities are occurring nearest to the haul-out area; and (3) 5 additional days, to be decided when the schedule of work is provided by the contractor. At least one observer will conduct monitoring at both the north and south haul-outs. NMFS will specify that the 5 additional monitoring days shall be either additional days of heightened activity (if they occur) or representative of typical levels of activity. Should extreme reactions of seals occur (e.g., apparent abandonment of the haul-out) at any time during the project, DNR will stop removal activities and consult with NMFS.

In addition, NMFS considered and rejected this expanded plan when developing the proposed IHA, and provided a discussion of the reasoning and justification for that decision in the proposed IHA Federal Register notice. Please see that discussion for complete justification of this decision. The Commission has not provided any new information that would change NMFS' determination that the monitoring plan is sufficient when considering benefit to the species and practicability for the applicant.

Comment 2: The Commission recommends that NMFS require the presence of approved observers before, during, and after all soft starts of pile removal activities to gather the data needed to determine the effectiveness of this technique as a mitigation measure.

Response: The Commission repeats its previous recommendation, but limits it to a subset of activity – the soft start of the vibratory hammer. The reasoning for this recommendation is that the efficacy of the soft start technique has not been empirically verified and, as such, NMFS should not assume that this mitigation method is effective. While it is reasonable to assume that the gradual introduction of sound into the marine environment would alert animals and allow them to depart an area before the sound reached levels that could result in injury (no sound that could result in injury to pinnipeds will be produced by this project; thus, use of soft start is precautionary), NMFS concurs that it is improper to assume any reduction in incidental take absent empirical verification. As such, in conducting its required analyses before determining whether a negligible impact determination may be reached, NMFS does not consider that the soft start technique will result in any reduction of incidental take. NMFS does consider soft start to be a mitigation measure, and accordingly recommends the measure to applicants, but does not attempt to quantify the level of mitigation that the technique may provide, nor does it rely on any assumption of efficacy in reaching its negligible impact determination. Further, it is unclear how expanded monitoring, in the absence of specific experimental design, would empirically verify the efficacy of this technique. The Commission does not provide any information that would be useful in this regard.

For the reasons discussed in NMFS' Federal Register notice of proposed IHA, and in the preceding response, an expanded monitoring program is not warranted or considered practicable in this instance.

Comment 3: The Commission recommends that NMFS require the DNR to (1) immediately report all injured or dead marine mammals to NMFS and the local stranding network and (2) suspend the construction activities if a marine mammal is seriously injured or killed and the injury or death could have been caused by those activities (e.g., a fresh carcass is discovered). The Commission also recommends that if further measures are not likely to reduce the risk of additional serious injuries or deaths to a very low level, NMFS should require the DNR to obtain the necessary authorization for such takings under section 101(a)(5)(A) of the MMPA before resuming its construction activities.

Response: NMFS concurs with the Commission's recommendation.

Description of Marine Mammals in the Area of the Specified Activity

The only marine mammal species that may be harassed incidental to DNR's restoration activities is the harbor seal. Harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of the Washington Inland Waters stock of harbor seals and its occurrence in the action area in the notice of the proposed IHA (76 FR 56172; September 12, 2011).

Potential Effects of the Activity on Marine Mammals

Potential effects of DNR's proposed activities are likely to be limited to behavioral disturbance of seals at the two log boom haul-outs located in the action area. Other potential disturbance could result from the introduction of sound into the environment as a result of pile removal activities; however, this is unlikely to cause an appreciably greater amount of harassment in either numbers or degree, in part because it is anticipated that most seals will be disturbed initially by physical presence of crews and vessels or by sound from vessels.

There is a general paucity of data on sound levels produced by vibratory extraction of timber piles; however, it is reasonable to assume that extraction will not result in higher sound pressure levels (SPLs) than vibratory installation of piles. As such, NMFS assumes that source levels from the proposed activity will not be as high as average source levels for vibratory installation of 12-24 in steel piles (155-165 dB; Caltrans, 2009). NMFS' general in-water harassment thresholds for pinnipeds exposed to continuous noise, such as that produced by vibratory pile extraction, are 190 dB root mean square (rms) re: 1 µPa as the potential onset of Level A (injurious) harassment and 120 dB RMS re: 1 µPa 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.

Vibratory extraction will not result in sound levels near 190 dB; therefore, injury will not occur. However, noise from vibratory extraction will likely exceed 120 dB near the source and may induce responses in-water such as avoidance or other alteration of behavior at time of exposure. However, seals flushing from haul-outs in response to small vessel activity and the presence of work crews would already be considered as 'harassed'; therefore, any harassment resulting from exposure to sound pressure levels above the 120 dB criterion for behavioral harassment would not be considered additional.

The airborne sound disturbance criteria currently used by NMFS for Level B harassment is 90 dB rms re: 20 µPa for harbor seals. Based on information on airborne source levels measured for pile driving with vibratory hammer, removal of wood piles is unlikely to exceed 90 dB (WA DNR, 2011); further, the vibratory hammer will be outfitted with a muffling device ensuring that airborne SPLs are no higher than 80 dB.

Potential effects of sound produced by the action on harbor seals were detailed in the notice of the proposed IHA (76 FR 56172; September 12, 2011). In short, while it may be inferred that temporary hearing impairment (temporary threshold shift; TTS) could theoretically result from the DNR project, it is highly unlikely, due to the source levels and duration of exposure possible. It is expected that elevated sound will have only a negligible probability of causing TTS in individual seals. Further, seals are likely to be disturbed via the approach of work crews and vessels long before the beginning of any pile removal operations and would be apprised of the advent of increased underwater sound via the soft start of the vibratory hammer. It is not expected that airborne sound levels will induce any form of behavioral harassment, much less TTS in individual pinnipeds.

The DNR and other organizations, such as the Cascadia Research Collective, have been monitoring the behavior of harbor seals present within the NRCA since 1977. Past disturbance observations at Woodard Bay NRCA have shown that seal harassment results from the presence of non-motorized vessels (e.g., recreational kayaks and canoes), motorized vessels (e.g., fishing boats), and people (Calambokidis and Leathery, 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 work crews and vessels will result in behavioral harassment, primarily by flushing seals off log booms, or by causing short-term avoidance of the area or similar short-term behavioral disturbance.

In summary, based on the preceding discussion and on observations of harbor seals during past management activities in Woodard Bay, NMFS has determined that impacts to harbor seals during restoration activities will be limited to behavioral harassment of limited duration and limited intensity (i.e., temporary flushing at most) resulting from physical

disturbance. It is anticipated that seals would be initially disturbed by the presence of crew and vessels associated with the habitat restoration project. Seals entering the water following such disturbance could also be exposed to underwater SPLs greater than 120 dB (i.e., constituting harassment); however, given the short duration and low energy of vibratory extraction of 12-24 in timber piles, PTS will not occur and TTS is not likely. Alternatively, the presence of work crews and vessels, or the introduction of sound into the water, could result in short-term avoidance of the area by seals seeking to use the haul-out. Abandonment of any portion of the haul-out is not expected, as harbor seals have been documented as quickly becoming accustomed to the presence of work crews. During similar activities carried out under the previous IHA, seals showed no signs of abandonment or of using the haul-outs to a lesser degree.

Anticipated Effects on Habitat

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 56172; September 12, 2011). While marine mammal habitat will be temporarily ensonified by low sound levels resulting from habitat restoration effort, no impacts to the physical availability of haul-out habitat will occur. It is expected that, at most, temporary disturbance of habitat potentially utilized by harbor seal prey species may occur as piles are removed. The DNR's restoration activities will result in a long-term net positive gain for marine mammal habitat, compared with minimal short-term, temporary impacts.

Mitigation

In order to issue an IHA 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 will continue certain mitigation measures stipulated in the 2010 IHA, 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 (i.e., within the designated in-water work window designed to reduce impacts to fish species in Woodard Bay), outside of harbor seal pupping and molting seasons. Therefore, no impacts to pups or molting individuals from the specified activity during these sensitive time periods will occur. In addition, the following measures will be implemented:

- 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 haul-out areas;
- The contractor or PSO will survey the operational area for seals before initiating activities and 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 equipment or from a piling or structure breaking free;
- The DNR will require the contractor to initiate a vibratory hammer soft start at the beginning of each work day; and
- The vibratory hammer power pack will be outfitted with a muffler to reduce in-air noise levels to a maximum of 80 dB.

The soft start method involves a reduced energy vibration from the hammer for the first 15 seconds and then a 1-minute waiting period. This method will be repeated twice before commencing with operations at full power.

In addition, and as a result of an unauthorized mortality resulting from entanglement, DNR will no longer mark broken pilings with buoys for later retrieval by divers. The entanglement and subsequent death of a harbor seal in one of these buoy lines was considered to be an unusual occurrence and is unlikely to happen again. Nonetheless, contractors will be required to record broken piling locations for divers using a global positioning system instead of marking pilings with buoys or flags. This measure eliminates the possibility of such mortality.

NMFS has carefully evaluated the applicant's mitigation measures as proposed and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes 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.

Injury, serious injury, or mortality to pinnipeds could likely only potentially result from startling animals inhabiting the haul-out into a stampede reaction. However, even in the event that such a reaction occurred, it is unlikely that it would result in injury, serious injury, or mortality, as the activities will occur outside of the pupping season, and access to the water from the haul-outs is relatively easy and unimpeded. However, DNR has proposed to approach haul-outs gradually from a distance, and will begin daily work at the farthest distance from the haul-out in order to eliminate the possibility of such events. During the previous year of work under NMFS' authorization, implementation of similar mitigation measures has resulted in no known

injury, serious injury, or mortality (other than an atypical event that was outside the scope of the mitigation measures considered in relation to disturbing seals from the haul-outs).

Based upon the DNR's record of management in the NRCA, information from monitoring DNR's implementation of the mitigation measures as prescribed under the previous IHA, and NMFS' evaluation of the applicant's proposed measures and other measures considered by NMFS, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat.

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.

DNR's monitoring plan adheres to protocols already established for Woodard Bay to the maximum extent practical for the specified activity. Monitoring of both the north and south haul-outs will occur for a total of 15 out of the 40 work days. Monitoring will occur during the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer; during 5 days when activities are occurring within 100 yd (91 m) of the haul-out area; and during 5 additional days, to be decided when the schedule of work is provided by the contractor. Monitoring of both haul-outs will be performed by at least one protected species observer (PSO). The PSO will (1) be on-site prior to crew and vessel arrival to determine the

number of seals present pre-disturbance; (2) maintain a low profile during this time to minimize disturbance from monitoring; and (3) conduct monitoring beginning 30 minutes prior to crew arrival, during pile removal or other restoration activities, and for 30 minutes after crew leave the site (or until dark).

The PSO will record incidental takes (i.e., numbers of seals flushed from the haul-out). 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 and recording the number of seals that flush from the haul-out 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 to the disturbed animals, and observable behavioral reactions to specific disturbances will also be noted. In addition, the PSO will record:

- The number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day;
- Seal behavior before, during and after pile and structure removal;
- Monitoring dates, times and conditions;
- Dates of all pile and structure removal activities; and
- After correcting for observation effort, the number of seals taken over the duration of the habitat restoration project.

Within 30 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

NMFS is authorizing DNR to take harbor seals, by Level B harassment only, incidental to specified restoration activities. These activities, involving extraction of creosoted timber piles and removal of derelict pier superstructure, are expected to harass marine mammals present in the vicinity of the project site through behavioral disturbance only. Estimates of the number of marine mammals that may be harassed by the activities are based upon actual counts of harbor seals harassed during days monitored under the previous IHA, and the estimated total number of working days. Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (76 FR 56172; September 12, 2011).

DNR considers that 40 total work days may occur, potentially resulting in incidental harassment of harbor seals. Using the average count from monitoring under the previous IHA (November-December 2010; 52), the result is an estimated incidental take of 2,080 harbor seals (40 days x 52 seals per day). NMFS considers this to be a highly conservative estimate in comparison with the estimated actual take of 875 seals from 2010, which is nonetheless based upon the best available scientific information.

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 determining whether or not authorized incidental take will have a negligible impact on affected species or stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of take that may occur. DNR's restoration activities may harass only those pinnipeds hauled out in Woodard Bay, a relatively small and localized group of animals. No mortality or injury is anticipated or proposed

for authorization, nor will the proposed action result in long-term impacts such as permanent abandonment of the haul-out. Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment. However, seals have been observed as becoming habituated to physical presence of work crews, and quickly re-inhabit haul-outs upon cessation of stimulus. In addition, the proposed restoration actions may provide improved habitat function for seals, both indirectly through a healthier prey base and directly through restoration and maintenance of man-made haul-out habitat. No impacts will be expected at the population or stock level.

No pinniped stocks known from the action area are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity.

Although the estimated take of 2,080 is relatively high in comparison with the estimated population of 14,612 for the Washington Inland Waters stock of harbor seals (14 percent), the number of individual seals harassed will be low, with individual seals likely harassed multiple times. In addition, although the estimated take is based upon the best scientific information available, NMFS considers the estimate to be highly conservative. For similar restoration activities in 2010, estimated actual take was much lower (875 seals, albeit over 35 work days rather than the 40 estimated for 2011).

Mitigation measures will minimize onset of sudden and potentially dangerous reactions as well as overall disturbance. In addition, restoration work is not likely to affect seals at both haul-outs simultaneously, based on location of the crew and barge. Further, although seals may initially flush into the water, based on previous disturbance studies and maintenance activity at the haul-outs, the DNR expects seals will quickly habituate to piling and structure removal

operations. For these reasons no long term or permanent abandonment of the haul-out is anticipated. The proposed action is not anticipated to result in injury, serious injury, or mortality to any harbor seal. The DNR will not conduct habitat restoration operations during the pupping and molting season; therefore, no pups or molting individuals 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.

Based on the foregoing analysis, behavioral disturbance to pinnipeds in Woodard Bay will be of low intensity and limited duration. To ensure minimal disturbance, DNR will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammal stocks or populations and their habitat. NMFS finds that DNR's restoration activities will result in the incidental take of small numbers of marine mammals, and that the requested number of takes will have no more than a negligible impact on the affected species and 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).

There are no ESA-listed marine mammals found in the action area; therefore, no consultation under the ESA is 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 prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the

human environment resulting from issuance of an IHA to DNR. NMFS signed a Finding of No Significant Impact on October 27, 2010. NMFS has reviewed the proposed application and determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary. The EA referenced above is available for review at http://www.nmfs.noaa.gov/pr/permits/incidental.htm.

Determinations

NMFS has determined that the impact of conducting the specific activities described in this notice and in the IHA request in Woodard Bay, Washington may result, at worst, in temporary modifications in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected stock of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to DNR to conduct habitat restoration activities in Woodard Bay during the period of November 1, 2011, through February 28, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 26, 2011._____

Wanda L. Cain,

Chief,

Planning and Program Coordination Division,

Office of Protected Resources,

National Marine Fisheries Service.

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