Resources Division under section 7 of the ESA on the issuance of an IHA to Statoil under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

In 2010, NMFS prepared an Environmental Assessment (EA) and issued findings of no significant impact (FONSIs) for open-water seismic and marine surveys in the Beaufort and Chukchi seas by Shell and Statoil. A review of Statoil's proposed 2011 open-water shallow hazards surveys indicates that the planned action is essentially the same as the marine survey conducted by Shell in 2010, but on a smaller scale. In addition, the review indicated that there is no significant change in the environmental baselines from what were analyzed in 2010. Therefore, NMFS is preparing a Supplemental EA which incorporates by reference the 2010 EA and other related documents, and updates the activity to reflect the lower impacts compared to the previous season.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Statoil's 2011 open water shallow hazards survey in the Chukchi Sea, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 17, 2011.

James H. Lecky,

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

[FR Doc. 2011–12666 Filed 5–23–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA116

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Pile Replacement Project

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

ACTION: Notice; issuance of an 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 U.S. Navy (Navy) to incidentally harass, by Level B harassment only, five species of marine mammals during pile driving and removal activities conducted as part of a pile replacement project in the Hood Canal, Washington.

DATES: This authorization is effective from July 16, 2011, through July 15, 2012.

ADDRESSES: A copy of the IHA and application 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 the Navy's Environmental Assessment and NMFS' 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, NMFS, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and a notice of a proposed authorization is provided to the public for review.

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, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. 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 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 small numbers of marine mammals. Within 45 days of the close of the public 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

NMFS received an application on December 16, 2010, from the Navy for the taking of marine mammals incidental to pile driving and removal in association with a pile replacement project in the Hood Canal at Naval Base Kitsap in Bangor, Washington (NBKB). Vibratory and impulsive pile driving and vibratory and pneumatic chipping removal operations associated with the pile replacement project have the potential to affect marine mammals within the waterways adjacent to NBKB, and could result in harassment as defined in the MMPA. This pile replacement project will occur between July 16, 2011, and July 15, 2013, with this IHA covering the first year of work. Six species of marine mammals may be present within the waters surrounding NBKB: Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), killer whales (*Orcinus orca*), Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion. Steller sea lions are present only from fall to late spring (November–June), outside of

the project's in-water work timeline (July 16–October 31). Additionally, while the Southern Resident killer whale (listed as endangered under the Endangered Species Act [ESA]) is resident to the inland waters of Washington and British Columbia, it is not found in the Hood Canal and was therefore excluded from further analysis. Only the five species which may be present during the project's timeline may be exposed to sound pressure levels associated with vibratory and impulsive pile driving, and were analyzed in detail in NMFS' analysis of this action.

Description of the Specified Activity

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the **Federal Register** on February 4, 2011 (76 FR 6406). A complete description of the action was included in that notice and will not be reproduced here.

NBKB is located on the Hood Canal approximately 20 miles (32 km) west of Seattle, Washington, and provides berthing and support services to Navy submarines and other fleet assets. The Navy proposes to complete necessary repairs and maintenance at the Explosive Handling Wharf #1 (EHW–1) facility at NBKB as part of a pile replacement project to restore and maintain the structural integrity of the wharf and ensure its continued functionality to support necessary operational requirements. The EHW–1 facility has been compromised due to the deterioration of the wharf's existing piling sub-structure. The project includes the removal of the fragmentation barrier, walkway, and 138 steel and concrete piles at EHW–1. Of the piles requiring removal, 96 are 24-in (0.6 m) diameter hollow pre-cast concrete piles which will be excised down to the mud line. An additional three 24-in (0.6 m) steel fender piles, and thirty-nine 12-in (0.3 m) steel fender piles, will be extracted using a vibratory hammer. Also included in the repair work is the installation of 28 new 30-in (0.8 m) diameter steel pipe piles, the construction of new cast-in-place pile caps (concrete formwork may be located below Mean Higher High Water [MHHW]), the installation of the pre-stressed superstructure, the installation of five sled-mounted cathodic protection (CP) systems, and the installation or re-installation of related appurtenances.

The removal and installation of piles at EHW–1 is broken up into three components described in detail below and depicted in Figure 1–3 of the Navy's application. The first component of this project will entail:

- Removal of one 24-in diameter steel fender pile and its associated fender system components at the outboard support;
- Installation of sixteen 30-in diameter hollow steel pipe piles;
- Construction of two cast-in-place concrete pile caps, to be situated on the tops of the steel piles located directly beneath the structure in order to function as a load transfer mechanism between the superstructure and the piles; and
- Installation of three sled mounted passive CP systems, banded to the steel piles to prevent corrosion.

The second component of this project will require:

- Removal of two 24-in diameter steel fender piles at the main wharf and associated fender system components;
- Installation of twelve 30-in diameter hollow steel pipe piles;
- Construction of four concrete pile caps;
- Installation of a pre-stressed concrete superstructure, or concrete deck of the wharf;
- Installation of two sled mounted passive CP systems; and
- Installation or re-installation of related appurtenances.

The final component of this project will be:

- Removal of the concrete fragmentation barrier and walkway, likely by cutting the concrete into sections (potentially three or four in total) using a saw, or other equipment, and removal using a crane; and
- Removal of the piles supporting the fragmentation barrier, including:
  - Thirty-nine 12-in diameter steel fender piles
  - Ninety-six 24-in diameter hollow pre-cast concrete piles cut to the mud line.

Vibratory driving will be the preferred method for all pile installation, and vibratory methods will be used for removal of all steel piles. Concrete piles will be removed with a pneumatic chipping hammer or another tool capable of cutting through concrete. The concrete debris will be captured using debris curtains/sheeting and removed from the project area. During pile installation, depending on local site conditions, it may be necessary to drive some piles for the final few feet with an impact hammer. This technique, known as proofing, may be required due to substrate refusal. As a result of consultation with USFWS under the ESA, impact pile driving, if required for proofing, will not occur on more than five days, and no more than one pile may be proofed in a given day. Further, impact driving or proofing will be limited to 15 minutes per pile (up to five piles total). During previous repairs at EHW–1, no use of impact driving has been required to accomplish installation. All impact driving will be conducted with the use of a sound attenuation device (*e.g.,* bubble curtain) to minimize in-water noise.

Vibratory pile driving is restricted to the time period between July 16 and October 31, while impact driving would only be performed between July 16 and September 30. Non-pile driving, in-water work can be performed between July 16 and February 15. The Navy will monitor hydroacoustic levels, as well as the presence and behavior of marine mammals during pile installation and removal. In total, twenty-eight 30-in steel piles will be installed and 138 piles, steel and concrete, will be removed.

The Navy estimates that steel pile installation and removal will occur at an average rate of two piles per day. For each pile installed, the driving time is expected to be no more than 1 hour for the vibratory portion. Impact pile driving, when required, will be limited to a maximum of five piles, with no more than one pile driven in a given day and no more than 15 minutes per pile. Steel piles will be extracted using a vibratory hammer. Extraction is anticipated to take approximately 30 minutes per pile. Concrete piles will be removed using a pneumatic chipping hammer or other similar concrete demolition tool. It is estimated that concrete pile removal could occur at a rate of five piles per day maximum, but removal will more likely occur at a rate of three piles per day. It is expected to take approximately 2 hours to remove each concrete pile with a pneumatic chipping hammer. For steel piles, this results in a maximum of two hours of pile driving per pile or potentially 4 hours per day. For concrete piles, this results in a maximum of 2 hours of pneumatic chipping per pile, or potentially 6 hours per day. The total estimated time from vibratory pile driving during steel pile installation would be approximately 14 days (28 piles at an average of two per day). The total time from impact pile driving during steel pile installation would be 5 days (five piles at one per day). The total time from vibratory pile driving during steel pile removal would be 21 days (42 piles at an average of two per day). The total time using a pneumatic chipping hammer during concrete pile removal would be 32 days (96 piles at an average of three per day).

For pile driving activities, the Navy used NMFS-promulgated thresholds for assessing pile driving and removal impacts (NMFS 2005b, 2009). The Navy used recommended spreading loss formulas (the practical spreading loss equation for underwater sounds and the spherical spreading loss equation for airborne sounds) and empirically-measured source levels from other similar events, including impact driving 30-in (0.8 m) diameter steel piles, vibratory removal of 30-in steel piles, and removal of 24-in concrete piles with a jackhammer to estimate potential marine mammal exposures. Predicted exposures are outlined later in this document. The calculations predict that no injury, serious injury, or mortality would occur associated with pile driving or removal activities, and that 2,488 Level B harassments may occur during the pile replacement project from underwater sound. No incidents of harassment were predicted from airborne sounds associated with pile driving.

Comments and Responses

On February 4, 2011, NMFS published a notice of the proposed IHA (76 FR 6406) in response to the Navy's request to take marine mammals incidental to a pile replacement project and requested comments and information concerning that request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC). The MMC's comments and NMFS' responses are detailed below.

Comment 1: The MMC recommends that NMFS require the Navy to make careful observations in conjunction with in-air sound propagation information in order to add to the limited data available so that in the future thresholds for harassment due to airborne sound can be set based on more robust data.

Response: NMFS agrees with the MMC about the importance of founding thresholds for behavioral harassment from airborne sound upon the best scientific information available, and about the importance of collecting additional data to improve that information. As described in the notice of proposed IHA, the Navy will be required to collect information regarding observed marine mammal behavioral responses to project activities, and if possible, the correlation to sound pressure levels. This information will be included in the Navy's monitoring report after completion of the pile replacement project.

Comment 2: The MMC recommends that NMFS require the Navy to provide a full description of the survey methods used during shoreline surveys at NBKB, including how the Navy searched for animals, if and how it corrected its estimate for sighting probability, and if and how it corrected its estimate for decreasing sighting probability with distance from the observer.

Response: The Navy has conducted two types of shoreline surveys at NBKB. The first set, which generated data used by the Navy in calculating density for California sea lions, are opportunistic visual and binocular area scans for marine mammals conducted by NBKB personnel from land at the NBKB waterfront. Sightings of marine mammals at manmade haul-out locations (*e.g.,* piers) along the NBKB waterfront and in waters adjoining these locations are recorded. NBKB personnel attempt to conduct these surveys daily during a typical work week (i.e., Monday–Friday), although inclement weather or security constraints sometimes preclude surveying. Due to these constraints, the number of surveys conducted each month varies. During July–October (the period of in-water work for the pile replacement project), surveys have been conducted an average of thirteen times per month. Data recorded during these scans includes species, behavior, associated habitat, and weather, among other descriptive information. The majority of all sightings are of hauled-out individuals.

No correction factor for sighting probability of California sea lions was used because there is no existing data to support it. The availability of a published study in which the movement of tagged animals was used in conjunction with aerial surveys allowed the Navy to use such a correction factor for harbor seals. The Navy did not correct for decreasing detection probability with distance because it would be atypical to do so for shoreline pinniped surveys. Correcting for decreasing sighting probability with distance is appropriate for at-sea surveys, typically targeted towards cetaceans. In addition, no information that could potentially support such a correction was collected during the surveys. Each shoreline and wharf location is at a different height above the surface; therefore, the distance surveyed offshore is different at each position, which would result in deviations in detection probability rather than a constant value. However, the area surveyed of nearshore waters adjoining manmade haul-out locations is generally contained within the Waterfront Restricted Area (WRA), which extends approximately 500–1000 m offshore, and is generally able to be clearly observed.

The second set of shoreline surveys conducted by the Navy, which generated data used by the Navy in calculating density for Dall's porpoise and harbor porpoise, were defined line transect surveys. Marine mammal surveys were conducted from a small vessel operating at a speed of approximately five knots. Surveys involved following pre-determined transects parallel to the shoreline along the 3.5-mi (5.6 km) waterfront. Transects were run from shallow water to deeper water with the first transect in each area located approximately 300 ft (91 m) offshore. Additional parallel transects were located at 300-ft intervals out to 1,800 ft (549 m) from shore. During these surveys, the distance surveyed offshore generally encompassed the area out to the WRA, resulting in a total area of 3.9 km^2 for each survey. Two observers and a vessel operator performed the surveys. Observers were trained in identification of marine mammal species and behavior, distance estimation, and area scanning techniques in order to reduce observer variation and avoid missed detections.

While on transect, the two observers scanned from zero degrees off the bow to ninety degrees abeam on each side of the vessel. Observers scanned ahead of the vessel for diving mammals and communicated any wildlife detections to the other observer to minimize missed detections and avoid duplicate observations. Observers scanned continuously, not staring in one direction, with a complete scan taking about 4–8 seconds. An observer focusing beyond 100 m is likely to miss some animals that are closer; thus, observers varied their focus from near to far fields in scanning within the 90-degree arc on each side of the vessel, and used binoculars only for species identification but not for sighting animals. To maintain effective transect width, animals detected through binoculars that would not otherwise have been detected with the naked eye were recorded in the comments field of the data form as being off transect. For each detection, time stamps were generated and location recorded with a GPS. In addition, the observers recorded a compass bearing and distance to each animal or group of animals at the point of first detection. Distances were measured with a laser rangefinder when possible. Number and species of animals and behavior at first sighting were recorded.

Comment 3: The MMC recommends that NMFS require the Navy to (1)

explain why it used the anticipated area of ensonification rather than surveyed area to estimate sea lion density and (2) correct the density estimate unless the Navy has a reasoned basis for not making such corrections.

Response: The data employed in deriving a density estimate for California sea lions comes from the first set of surveys (shoreline surveys) described previously. NMFS has determined that these surveys provide the best available data for determining sea lion density. The other available dataset (defined line transect surveys) included only 16 survey days in 2007–2008 during the time period in which the pile replacement project will occur (July–October); only six sightings of California sea lions were recorded during these 16 survey days. Two sightings were of individuals swimming, and the other four sightings were of groups of hauled-out animals. All observations of California sea lions during these surveys were over a mile away from the test pile location.

Although the first dataset is limited in not having a defined survey area, as exists for the second dataset, the first dataset provides several years of data with many more data points for the months in which the pile replacement project is scheduled to occur and is thus the more robust source of data for estimating density of California sea lions. As described previously, the shoreline surveys averaged 13 survey days per month during July-October of 2008–2009, thus providing 104 data points compared with 16 for the line transect surveys. In addition, use of this more robust dataset results in a more conservative estimate for California sea lion density. The Navy also investigated published studies external to survey efforts at NBKB. Ideally, aerial surveys encompassing the local population's entire geographic range, used in conjunction with a correction factor for sighting probability, would be available, as was the case for harbor seals. However, this data is not available for California sea lions in Hood Canal.

Because these surveys are of known manmade haul-out areas and adjoining waters, and are conducted from land, there is no appropriate way to define an area surveyed. It would not be appropriate to define survey area strictly as the area observed (i.e., the WRA) because the vast majority of sighted animals are hauled-out. At haul-outs, animals that forage over some greater area—unknown in this case—congregate in greater numbers than would be found in the absence of the availability of such habitat. Thus, a density calculated for animals found at known haul-outs and adjoining waters would not be applicable to the broader marine waters of the action area and would result in a gross exaggeration of sea lion numbers if extrapolated to that larger area. Because all of the California sea lion observations were of hauled-out individuals, which gives a reasonable proxy understanding of the numbers of animals that are utilizing waters in the vicinity of the project area for foraging, a reasonable method of generating a realistic in-water density would be to determine the approximate area that might be used by the animals when swimming and/or foraging. However, minimal data is available regarding the foraging home ranges of California sea lions. Research by Costa *et al.,* (2007) regarding the foraging behavior of 32 adult females in California indicated that they travel an average distance of 66.3 +/− 11 km from rookeries. Data from Wright *et al.,* (2010) for fourteen wintering males from the Columbia River indicate that travel is a maximum of 70 km from shore. Additional data for twelve adult males from mixed stocks in Washington showed a maximum travel distance of 99 km per day (Wright *et al.,* 2010). Given these data regarding California sea lion travel during foraging trips, NMFS feels that using the maximum action area—the largest area affected by underwater sound produced by the action (*i.e.,* 41.5 km^2)—as proposed by the Navy is an acceptable representation of the area in which these animals may be expected to forage in Hood Canal.

In a previous environmental analysis for Dabob Bay, located in Hood Canal to the south of the action area, the Navy used published data (Jeffries *et al.,* 2000) to produce a density estimate of 0.052 animals/km^2. While that was likely an underestimate, the density estimate produced by the methodology described here (0.410 animals/km^2) is significantly higher, and thus more conservative. The density estimate is conservative in part because the Navy used the highest recorded daily values for each month in the dataset to estimate density. For example, in September 2009, the Navy used the highest recorded value of 32 animals; the daily average for twelve surveys conducted that month was 6.75 animals. In addition, California sea lions are generally not present in the action area during July-August (one observed sea lion in 51 survey days during July-August 2008–2009).

It is possible that the data used, and the methodology used in estimating density, are not ideal. However, as described here, the data used is the best available, and the method of estimating density is the most appropriate based on available information. The density estimate is also likely conservative, as described here. Finally, no better information or alternative method of estimating density was provided or proposed to NMFS during the public comment period.

Comment 4: The MMC recommends that NMFS require the Navy to re-estimate the expected number of in-water and in-air takes for harbor seals using the overall density of harbor seals in Hood Canal (i.e., 3.74 animals/km^2).

Response: As described in NMFS' notice of proposed IHA, the entire population of harbor seals in Hood Canal is estimated at 1,088 (Jeffries *et al.,* 2003). Using this estimate, with the entire area of Hood Canal (291 km^2), produces a density estimate of 3.74 animals/km^2. This data represents comprehensive, dedicated aerial surveys that were conducted for harbor seals hauled out in the Hood Canal by the Washington State Department of Fish and Wildlife from 1978–1999. However, the work by Jeffries *et al.,* (2003) used a correction factor of 1.53, based on VHF-tagging data (Huber *et al.,* 2001), to account for seals in the water and not counted. The tagged animals were from the same populations that were surveyed aerially. The data from Huber *et al.,* (2001) indicated that approximately 65 percent of harbor seals are hauled-out at a given moment (i.e., only 35 percent of seals are in the water at a given moment). The data loggers in these studies ran 24 hours per day. These studies computed the average proportion ashore for all seals in the population assuming an annual basis; therefore, the data indicates that the percentage of harbor seals that can be in the water at any one time (35 percent) is assumed to be reasonably consistent on a daily basis for the entire year. As a result, exposures to underwater sound were calculated using a density derived from the number of harbor seals that are anticipated to be present in the water at any one time (35 percent of 1,088, or approximately 381 animals; 1.31 animals/km^2).

There are a number of caveats associated with use of this data. The cited studies involved aerial surveys that were conducted primarily at low-tide, when maximum numbers of seals were hauled-out. However, the correction factor applied to determine the total population and take into account in-water harbor seals was not based on the aerial surveys but on VHF tag data which is unaffected by tidal influences. While some of the aerial surveys were conducted in Hood Canal, Huber *et al.'*s (2001) tagging data came from outside Hood Canal. The VHF data

came from radio tags deployed in three sites within the coastal stock and three sites within the inland waters stock to determine any regional haul-out variability. While Hood Canal was not specifically sampled in Huber *et al.*'s (2001) study, Jefferies *et al.* (2003)—Huber was an author on this study as well—found the VHF data broadly applicable to all inland water stocks and applied it to estimate the total population for the inland waters. While it is possible that proportions of harbor seals in the water versus on land in Hood Canal could deviate slightly from other inland water stock populations, it is unlikely that such deviation would be large. No similar site specific data exists for Hood Canal. Therefore, the data described here is considered the best available.

It is possible that the density estimate used for estimating take may be an underestimate. Vibratory pile driving/extraction is estimated as occurring a maximum of four hours per day—with pneumatic chipping likely occurring a maximum of 6 hours in any day—and it is reasonable to expect that greater than 35 percent of the individuals in the action area would enter the water during the 4- to 6-hr duration of pile driving/removal. That is, assuming 65 percent of animals are hauled-out at a given time, it is possible that some animals may enter and exit the water during those four hours. Thus, while it is possible that no more than 35 percent of animals will be in the water at any given moment during pile driving, it is also possible that somewhat more than 35 percent could potentially be exposed to underwater sound from pile driving during those 4 hours. However, no data exists regarding fine-scale harbor seal movements within the project area on time durations of less than a day, thus precluding an assessment of ingress or egress of different animals through the action area. As such, it is impossible, given available data, to determine exactly what number of individuals above 35 percent may potentially be exposed to underwater sound. There is no existing data that would indicate that the proportion of individuals entering the water during pile driving would be dramatically larger than 35 percent; thus, the MMC's suggestion that 100 percent of the population be used to estimate density would likely result in a gross exaggeration of potential take.

In addition, there are a number of factors indicating that a density derived from 35 percent of the population may not result in an underestimate of take. Hauled-out harbor seals are necessarily at haul-outs, and no harbor seal haul-outs are located within or near the action area. Harbor seals observed in the vicinity of the NBKB shoreline are rarely hauled-out (for example, in formal surveys during 2007–2008, approximately 86 percent of observed seals were swimming), and when hauled-out, they do so opportunistically (i.e., on floating booms rather than established haul-outs). Harbor seals are typically unsuited for using manmade haul-outs at NBKB, which are used by sea lions. Primary harbor seal haul-outs in Hood Canal are located at significant distance (20 km or more) from the action area in Dabob Bay or further south (see Figure 4–1 in the Navy's application), meaning that animals casually entering the water from haul-outs or flushing due to some disturbance would not automatically be exposed to underwater sound; rather, only those animals embarking on foraging trips and entering the action area may be exposed. Moreover, because the Navy is be unable to determine from field observations whether the same or different individuals are being exposed, each observation will be recorded as a new take, although an individual theoretically would only be considered as taken once in a given day. If the estimated take is an underestimate (i.e., if authorized take is exceeded), there is the possibility that the Navy's action may need to be halted. Lastly, no alternative information or methodology was presented or proposed during the public comment period that would lead NMFS to believe that the MMC's recommendation would not lead to a gross exaggeration of potential take, or that would present a better estimate than that contained herein.

Comment 5: Because the Navy did not request authorization for take of harbor seals resulting from exposure to airborne sound, the MMC recommends that NMFS require the Navy to shut down activities whenever a harbor seal is within the in-air Level B harassment zone (i.e., within a radius of 358 m).

Response: The Navy's waterfront surveys have found that it is extremely rare for harbor seals to haul out in the vicinity of the test pile project area. While in-water sightings are fairly common, even temporary, opportunistic haul-out locations are limited within the acoustic zone of influence for airborne sound (maximum of 358 m) estimated for the pile replacement project. Harbor seal haul-out area can include intertidal or sub-tidal rock outcrops, sandbars, sandy beaches, peat banks in salt marshes, and manmade structures such as log booms, docks, and recreational floats. The lack of any of these suitable haul-out habitats in the immediate vicinity of the test pile project area makes it extremely unlikely that a harbor seal would be hauled out in range of sounds that could cause acoustic disturbance. The only structures within the largest airborne zone of influence (358 m) are the current Explosive Handling Wharf (EHW–1) and Marginal Wharf. Both of these structures are elevated more than sixteen feet above the Mean Higher High Water (MHHW) mark, so there is no opportunity for harbor seals to haul out on these structures, even during the highest tides. Secondly, while a small intertidal/shoreline zone is present between these structures, it does not represent favorable haul-out habitat for the harbor seal. The shoreline located between the current EHW–1 and Marginal Wharf is extremely narrow, and is backed by a steep cliff face that is heavily vegetated with trees. Additionally, any portion of the intertidal zone that may be exposed at low tide is also vegetated with eelgrass beds and macroalgae, neither of which is known haul-out attractant for harbor seals. All harbor seals that are found swimming or diving within 358 m of the pile location would be considered to be taken by underwater sounds from pile driving activities; thus, there is no additional need to shutdown any time a harbor seal is within the airborne Level B harassment zone.

Comment 6: The MMC recommends that NMFS encourage the Navy to consult with experts at the National Marine Mammal Laboratory to review and revise the Navy's survey methods as needed to make them scientifically sound.

Response: The Navy has consulted with marine science experts in the past in the development of surveys and will continue to do so, including outreach with the National Marine Mammal Laboratory. NMFS is supportive of the Navy's effort to improve the strength of their survey design.

Comment 7: The MMC recommends that NMFS require the Navy to record distances to and behavioral observations of animals sighted within the entirety of the in-water Level B harassment zone that would be established for vibratory pile driving and removal activities.

Response: All shutdown and buffer zones will initially be based on predicted distances from the source, as described in the Navy's application. The size of the shutdown and buffer zones will be adjusted accordingly based on in-situ empirically measured received sound pressure levels. The 120-dB disturbance criterion for vibratory pile driving predicts an affected area of 40.3 km^2. Due to financial and personnel constraints, it is impracticable to

effectively monitor such a large area. However, the 120-dB zone will be adjusted as necessary based on the results of in-situ hydroacoustic monitoring, and it is possible that the true 120-dB zone may be of a size that is practicable to monitor. Nevertheless, the Navy has committed to monitoring a minimum zone of 2,400 m, which corresponds to the width of the Hood Canal at the project site. This distance subsumes the next largest buffer zone (the 501 m, 90-dB harassment zone for airborne sound from impact pile driving). Observers will also be placed in additional locations within the 40.3 km^2 vibratory disturbance zone, as indicated in the Navy's Marine Mammal Monitoring Plan. Sightings occurring in the area outside of the 2,400 m zone—the maximum zone in which it is practicable to effectively monitor—will still be recorded and noted as a take. However, it would not be possible to state with certainty that all takes were recorded, and fine-scale behavioral observations may not be possible. In addition, the proposed monitoring methodology is consistent with other actions analyzed by NMFS that involve prohibitively large harassment zones. These include seismic air gun and sonar activities, in which visual monitoring is only practicable for an exclusion zone corresponding to the injury thresholds and precise quantification of impacts to marine mammals within the behavioral harassment zones could not be empirically verified through visual observation, but was estimated by modeling.

Comment 8: The MMC recommends that NMFS complete an analysis of the impact of the proposed activities together with the cumulative impacts of all the other pertinent risk factors affecting marine mammals in the Hood Canal area, including the Navy's concurrent wharf repair project, before issuing the authorization.

Response: The pile replacement project and the test pile program overlap somewhat spatially and temporally. Spatially, the two areas are located adjacent to one another. There could be an overlap in their buffer zones (Level B harassment zones) but not for their exclusion zones (Level A harassment or injury zones) when the test piles closest to EHW–1 are installed and removed. Temporal overlap will occur as both projects will operate with a work window from July 16 through October 31. However, for the test pile program impact pile driving will cease no later than October 14, and for pile replacement at EHW–1, impact pile driving will cease no later than September 30.

The injury zones are not large enough to overlap spatially, and the Navy has agreed that no simultaneous impact driving will occur, in order to ensure that the combined energy of two impact rigs operating at once would not increase the potential injury zones. With regard to impact pile driving, EHW–1 is limited to impact pile driving only five piles per year, with a maximum of one pile driven per day and a maximum of 15 minutes of impact driving per pile. The test pile program is anticipated to require proofing for 18 test piles, although additional impact driving may be required should any of the piles fail to reach the necessary embedment depth with vibratory driving. Any impact pile driving during the test pile program would be limited to 100 strikes or 15 minutes per day.

No limitation has been placed upon vibratory pile installation and removal, as such limitation would significantly extend the length of each project's timeline and would result in a longer period of potential exposure for marine mammals in the Hood Canal. Vibratory pile drivers produce significantly lower initial sound pressure levels than impact hammers and are not known to cause injury to marine mammals. The simultaneous use of two vibratory drivers with similar sound outputs would likely increase initial sound pressure levels by approximately three decibels, thus increasing the potential area encompassed by the 120-dB buffer zone (Level B harassment zone) from a modeled 100,000 m to 158,489 m, using the practical spreading loss model. As described in NMFS' notice of proposed IHA, these distances assume a field free of obstruction. However, Hood Canal does not represent open water conditions, and sound attenuates upon encountering land masses or bends in the canal. As a result, neither hypothetical area of potential behavioral effects is possible in the project area. The actual distances to the 120-dB behavioral disturbance threshold for vibratory pile driving will be significantly reduced due to the irregular contours of the waterfront, narrowness of the canal, and maximum fetch (furthest distance sound waves travel without obstruction) at the project area. Based on these factors, the concurrent use of vibratory hammers at both project locations will not result in any actual increase in the area encompassed by the 120-dB criteria.

The Navy and NMFS have considered the potential overlap of these projects and the resulting effects that may occur, and have addressed these issues in the cumulative impacts analyses contained within their respective NEPA documents for these projects.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species that may be harassed incidental to estuary management activities are the harbor seal, California sea lion, killer whale, Dall's porpoise, and harbor porpoise. None of these species are 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 these stocks and their occurrence in the action area in the notice of the proposed IHA (76 FR 6406; February 4, 2011).

Potential Effects of the Activity on Marine Mammals

NMFS has determined that pile driving, as outlined in the project description, has the potential to result in behavioral harassment of California sea lions, harbor seals, harbor porpoises, Dall's porpoises, and killer whales that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. Pile driving could potentially harass those pinnipeds that are in the waters adjoining the project site.

Based on the analysis contained in NMFS' notice of proposed IHA, it is unlikely that this project will result in temporary or permanent hearing impairment or non-auditory physical or physiological effects for any marine mammal. Because this project involves driving a small number of piles, with limited use of an impact driver, and will occur in a small area for limited duration, effects to marine mammals are likely to be limited to behavioral harassment. The planned mitigation measures for this project (see the "Mitigation" section later in this document) are designed to detect marine mammals occurring near the pile driving to avoid exposing them to sound pulses that might, in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of pile driving sound are high enough that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

The effects of behavioral disturbance resulting from this project are difficult to predict, as behavioral responses to sound are highly variable and context specific. A number of factors may influence an animal's response to noise,

including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure. These behavioral changes may include changes in duration of surfacing and dives or moving direction and/or speed; changes in vocalization; visible startle response or aggressive behavior; avoidance of areas where noise sources are located; and/or flight responses. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance. Since pile driving will likely only occur for a few hours a day, over a short period of time, it is unlikely to result in permanent displacement from the area. Temporary impacts from pile driving activities could be experienced by individual marine mammals, but would not be likely to cause population level impacts, or affect any individual's long-term fitness.

The three cetacean species are rare in the project area, and, if present, numbers will likely be in single digits. While pinniped numbers will likely be greater, there are several factors indicating that these animals may only experience minor effects from behavioral disturbance. No haul-out areas are located in the immediate vicinity of the project site. California sea lions haul-out on manmade structures along the NBKB waterfront, typically over a mile from the project site. Harbor seals, though present in the Hood Canal year-round, have primary haul-outs even further away, in Dabob Bay to the west and at points further south.

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 6406; February 4, 2011). The pile driving activities at NBKB will not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, but may have potential short-term impacts to food sources such as forage fish and salmonids. There are no rookeries or major haul-out sites within 10 km (6.2 mi), foraging hotspots, or other ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (i.e., fish) near NBKB and minor impacts to the immediate substrate during installation and removal of piles during the pile replacement project.

Sound pressure levels of sufficient strength have been known to cause injury to fish and fish mortality (CALTRANS 2001; Longmuir and Lively 2001). However, due to mitigation measures in place to reduce impacts to ESA-listed fish—notably including adherence to the July 16–October 31 work window—the most likely impact to fish from pile driving activities at the project area will be temporary avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the pile replacement project.

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 Navy has established exclusion and buffer zones (Level A and Level B harassment, respectively), based on modeling described in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011). The Navy will implement the following measures for these zones:

- The Navy will implement a minimum shutdown zone of 50 m (164 ft) radius around all pile driving and removal activity. Shutdown zones typically include all areas where the underwater SPLs are anticipated to equal or exceed the Level A (injury) harassment criteria for marine mammals (180-dB isopleth for cetaceans; 190-dB isopleth for pinnipeds). In this case, pile driving sounds are expected to attenuate below 180 dB at distances of 16 m or less, but the 50-m shutdown is intended to further avoid the risk of direct interaction between marine mammals and the equipment.
- The buffer zone shall initially be set at a radius of 2,400 m, which is the width of the Hood Canal at the project site. This zone, which would subsume the 160-dB buffer zone, is the maximum area that is practicable for the Navy to monitor. The full 120-dB buffer zone for vibratory pile driving (modeled as radius of 15,849 m, but reduced to 40.3 km^2 when attenuation due to landmasses is accounted for) is so large as to make monitoring impracticable. Additional observers will be present in this zone, and any sighted animals would be recorded as takes, but it is impossible to guarantee that all animals will be observed or to make observations of fine-scale behavioral reactions to sound throughout this zone. The 2,400 m (1,644 ft) zone may be adjusted according to empirical, site-specific data after the project begins. Additional buffer zone distances, including the 501 m zone for airborne acoustic harassment (harbor seals), and the 160-dB zone for underwater sound (342 m), may also be adjusted based upon the results of hydroacoustic monitoring.
- The shutdown and buffer zones will be monitored throughout the time required to drive a pile. If a marine mammal is observed entering the buffer zone, a take will be recorded and behaviors documented. However, that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted.
- All buffer and shutdown zones will initially be based on the distances from the source that are predicted for each threshold level. However, in-situ acoustic monitoring will be utilized to determine the actual distances to these threshold zones, and the size of the shutdown and buffer zones will be adjusted accordingly based on received sound pressure levels.

Monitoring will take place from 30 minutes prior to initiation through 30 minutes post-completion of pile driving activities. The following additional measures will apply to visual monitoring:

- Monitoring will be conducted by qualified observers. A trained observer will be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shut-down or delay procedures when applicable by calling for the shut-down to the hammer operator.
- Prior to the start of pile driving activity, the shutdown and safety zones will be monitored for thirty minutes to ensure that they are clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the buffer zone (i.e., must leave of their own volition) and their behavior will be monitored and documented.

• If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, pile driving will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or thirty minutes have passed without re-detection of the animal.

The following additional measures will be implemented:

• Sound attenuation devices will be utilized during all impact pile driving operations.

• The Navy will use soft-start techniques (ramp-up and dry fire) recommended by NMFS for impact and vibratory pile driving. The soft-start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. This procedure will be repeated two additional times. For impact driving, contractors will be required to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets. No soft-start procedures exist for pneumatic chipping hammers.

• Pile driving will only be conducted during daylight hours.

• For in-water heavy machinery work other than pile driving (if any), if a marine mammal comes within 50 m (164 ft), operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

NMFS has carefully evaluated the mitigation measures described previously and considered their effectiveness in past implementation to 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; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

It is unlikely that injury, serious injury, or mortality to marine mammals would result from any actions undertaken during the pile replacement project. The impacts of the project will likely be limited to temporary behavioral disturbance. However, to reduce the amount and degree of behavioral disturbance that occurs, NMFS and the Navy have developed the previously described mitigation measures. These are designed to limit the numbers of marine mammals that are exposed to underwater sound, by reducing the intensity of sound entering the environment, limiting the amount of impact pile driving, and limiting the duration of all driving, and to prevent any individual from being exposed to levels of sound that could result in injury. Based upon experience from previous pile driving projects and the analysis contained in NMFS' notice of proposed IHA and in this document, NMFS has determined that these 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.

The Navy will conduct acoustic monitoring for impact driving of steel piles in order to determine the actual distances to the 190-, 180-, and 160-dB (re 1 μPa rms) isopleths and to determine the relative effectiveness of the bubble curtain system at attenuating noise underwater. The Navy will also conduct acoustic monitoring for vibratory pile driving in order to determine the actual distance to the 120-dB isopleth for behavioral harassment relative to background levels. Acoustic monitoring will occur for each type of pile installation and removal methodology, including impact and vibratory pile driving and pneumatic chipping. The Navy's hydroacoustic monitoring plan (see **ADDRESSES**) addresses collection of data for both underwater and airborne sounds from the pile replacement project, and is discussed in greater detail in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011).

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors. NMFS requires that the observers have no other construction related tasks while conducting monitoring. Details regarding monitoring protocols are available in the Navy's marine mammal monitoring plan, and were discussed in greater detail in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011). The Navy will note in their behavioral observations whether an animal remains in the project area following a Level B taking (which would not require cessation of activity). This information will ideally make it possible to determine whether individuals are taken (within the same day) by one or more types of pile driving (*i.e.,* impact and vibratory). NMFS requires that, at a minimum, the following information be collected on the sighting forms:

• Date and time that pile driving begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters identified in the acoustic monitoring (e.g., wind, humidity, temperature);

• Tide state and water currents;

• Visibility;

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Marine mammal behavior patterns observed, including bearing and direction of travel, and if possible, the correlation to sound pressure levels;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations; and

• Other human activity in the area.

A draft report would be submitted to NMFS within 45 days of the completion of acoustic measurements and marine mammal monitoring. The results would be summarized in graphical form and include summary statistics and time histories of impact sound values for each pile. A final report would be prepared and submitted to NMFS within thirty days following receipt of comments on the draft report from NMFS. At a minimum, the report shall include:

• Size and type of piles;

• A detailed description of the sound attenuation device, including design specifications;

• The impact or vibratory hammer force used to drive and extract the piles;

• A description of the monitoring equipment;

• The distance between hydrophone(s) and pile;

• The depth of the hydrophone(s);

- The depth of water in which the pile was driven;
- The depth into the substrate that the pile was driven;
- The physical characteristics of the bottom substrate into which the piles were driven;
- The ranges and means for peak, rms, and SELs for each pile;
- The results of the acoustic measurements, including the frequency spectrum, peak and rms SPLs, and single-strike and cumulative SEL with and without the attenuation system;
- The results of the airborne noise measurements including dBA and unweighted levels;
- A description of any observable marine mammal behavior in the immediate area and, if possible, the correlation to underwater sound levels occurring at that time;
- Results, including the detectability of marine mammals, species and numbers observed, sighting rates and distances, behavioral reactions within and outside of safety zones; and
- A refined take estimate based on the number of marine mammals observed in the safety and buffer zones. This may be reported as one or both of the following: a rate of take (number of marine mammals per hour), or take based on density (number of individuals within the area).

Estimated Take by Incidental Harassment

NMFS is authorizing the Navy to take harbor seals, California sea lions, killer whales, Dall's porpoises, and harbor porpoises, by Level B harassment only, incidental to pile driving and removal activities. These activities 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 is based upon the estimated densities of each species in the area, the modeled areas of ensonification to various thresholds, and the estimated number of pile driving days. Table 1 details the total number of authorized takes. Methodology of take estimation was discussed in detail in NMFS' notice of proposed IHA (76 FR 6406; February 4, 2011).

TABLE 1—AUTHORIZED NUMBERS OF INCIDENTAL MARINE MAMMAL TAKES

Species	Density	Underwater			Airborne	Total (percent of stock or population)
		Impact injury threshold	Impact disturbance threshold (160 dB)	Vibratory disturbance threshold (120 dB)	Impact and vibratory disturbance threshold	
California sea lion	0.410	0	5	553	0	558 (0.2)
Harbor seal	1.31	0	5	1,761	0	1,766 (12.1)
Killer whale	0.038	0	9	49	N/A	58 (18.5)
Dall's porpoise	0.043	0	1	70	N/A	71 (0.1)
Harbor porpoise	0.011	0	0	35	N/A	35 (0.3)
Total	0	20	2,468	0	2,488	

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 stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. Although the Navy's pile driving activities may harass marine mammals occurring in the project area, impacts are occurring to small, localized groups of animals for short durations or to individual cetaceans that may swim through the area. No permanent haul-outs or breeding or pupping areas are located within the action area. No mortality or injury is anticipated, nor will the action result in long-term impacts such as permanent abandonment of haul-outs. No impacts are 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. The number of animals authorized to be taken for each species of pinnipeds can be considered small relative to the population size. Please see Table 1 for these numbers.

Based on the foregoing analysis, behavioral disturbance to marine mammals in the Hood Canal will be of low intensity and limited duration. To ensure minimal disturbance, the Navy 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 mammals stocks or populations and their habitat. NMFS finds that the Navy's pile driving activities will result in the incidental take of small numbers of marine mammals, and that the authorized 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 during the project's in-water work timeframe; therefore, no consultation under the ESA is required by NMFS.

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, the Navy prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the pile replacement project. NMFS has adopted that EA in order to assess the impacts to the human environment of issuance of an IHA to the Navy. NMFS signed a Finding of No Significant Impact

(FONSI) on May 17, 2011. The Navy's EA and NMFS' FONSI for this action are 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 the specific geographic region in the Hood Canal, Washington may result, at worst, in a temporary modification 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 species or stocks 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 the Navy to conduct a pile replacement project in the Hood Canal from the period of July 16, 2011, through July 15, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 17, 2011.

James H. Lecky,

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

[FR Doc. 2011–12769 Filed 5–23–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Federal Need Analysis Methodology for the 2012–2013 Award Year

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal Need Analysis Methodology for the 2012–2013 award year.

Overview Information:

[CFDA Numbers 84.063; 84.038; 84.033; 84.007; 84.268; 84.379].

Federal Need Analysis Methodology for the 2012–2013 award year; Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and TEACH Grant Programs.

SUMMARY: The Secretary announces the annual updates to the tables that will be used in the statutory "Federal Need Analysis Methodology" to determine a student's expected family contribution (EFC) for award year 2012–2013 for the student financial aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). An EFC is the amount that a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV programs include the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, and the Teach Grant Programs (Title IV, HEA Programs).

FOR FURTHER INFORMATION CONTACT: Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, room 63G2, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. *Telephone:* (202) 377–3385.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of part F of title IV of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year for general price inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For award year 2012–2013, the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2010 and December 2011. However, because the Secretary must publish these tables before December 2011, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2011. The Secretary must also account for any misestimation of inflation for the prior year. In developing the table values for the 2011–2012 award year, the Secretary assumed a 1.2 percent increase in the CPI–U for the period December 2009 through December 2010. Actual inflation for this time period was 1.4 percent. The Secretary estimates that the increase in the CPI–U for the period December 2010 through December 2011 will be 0.8 percent. Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA by updating the procedures for determining the income protection allowance for dependent students, as well as the income protection allowance tables for both independent students with dependents other than a spouse, and independent students without dependents other than a spouse. As amended by the CCRAA, the HEA now includes new 2012–2013 award year values for these income protection allowances. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the education savings and asset protection allowances as provided for in section 478(d) of the HEA. The Education Savings and Asset Protection Allowance table for award year 2012–2013 has been updated in section 3 of this notice.

Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family for food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for award year 2012–2013 has been updated in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance (IPA).* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size. The IPA for the dependent student is $6,000. The IPAs for parents of dependent students for award year 2012–2013 are:

The IPAs for independent students with dependents other than a spouse for award year 2012–13 are: