

activity of the vessel or at the construction site when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

Endangered Species Act (ESA)

On January 12, 2007, NMFS concluded consultation with MARAD and USCG under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was that the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green, or leatherback sea turtles. Issuance of this IHA will not have any impacts beyond those analyzed in that consultation.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Neptune LNG Deepwater Port. A notice of availability was published by MARAD on November 2, 2006 (71 FR 64606). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods, and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency in the preparation of the Draft and Final EISs based on a Memorandum of Understanding related to the Licensing of Deepwater Ports entered into by the U.S. Department of Commerce along with 10 other government agencies. On June 3, 2008, NMFS adopted the USCG and MARAD FEIS and issued a separate Record of Decision for issuance of authorizations pursuant to sections 101(a)(5)(A) and (D) of the MMPA for the construction and operation of the Neptune LNG Port facility.

Determinations

NMFS has determined that the impact of construction and operation of the Neptune Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Neptune LNG facility and associated pipeline during its construction and operation. These activities are expected to result in some local short-term displacement, resulting in no more than a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the

affected species or stock for subsistence use does not apply for this action as there is no such uses of these species or stocks in the project area.

This determination is supported by measures described earlier in this document under "Mitigation and Monitoring Measures," "Reporting Requirements," and MARAD's ROD (and NMFS' Biological Opinion on this action). As a result of the described mitigation measures, no take by injury or death is requested, anticipated, or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low sound source levels (and consequently small zone of impact for hearing-related effects). The likelihood of such effects will be avoided through the incorporation of the shut-down mitigation measures mentioned in this document. While the number of marine mammals that may be harassed will depend on the distribution and abundance of marine mammals in the vicinity of the Port facility during construction and operation, the estimated number of marine mammals to be harassed is small.

Authorization

As a result of these determinations, NMFS has issued an IHA to Neptune for the taking (by Level B harassment only) incidental to construction and operation of the Neptune Port provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 26, 2009.

James H. Lecky,

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

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DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Whittier Harbor Navigation Improvements Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) announces its intention to prepare an Environmental Impact Statement (EIS) to study the feasibility of expanding the existing moorage capacity for vessels at Whittier, AK. This study will be performed

through partnership of USACE and the City of Whittier. The existing moorage at Whittier is at maximum capacity, resulting in overcrowded and unsafe conditions for harbor users. Additionally, the City will be unable to meet the growing moorage demands of commercial, charter, recreation, and subsistence vessels in the near future. The EIS will address potential environmental impacts of the construction, operation, and maintenance of the new and existing harbor. USACE has held scoping meetings in Whittier and Anchorage, AK, in an effort to better define the issues associated with Whittier Harbor. Scoping will be ongoing throughout the feasibility study process.

DATES: Letters to interested parties will be mailed in July 2009, to solicit public comment on the feasibility study. Accompanying the letter will be a summary of comments received as a result of scoping meetings held on February 19, 2009 in Whittier, AK and May 7, 2009 in Anchorage, AK. Subsequent meetings will be held as necessary and advertised in local newspapers.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS to: Mr. Michael Salyer, NEPA Coordinator, U.S. Army Corps of Engineers, Alaska District, EN-CW-ER, P.O. Box 6898, Elmendorf AFB, AK 99506-0898; Phone: 907-753-2690; Fax: (907) 753-2625, e-mail michael.g.salyer@usace.army.mil (please use "NOI Comments on Whittier Harbor" for the subject).

FOR FURTHER INFORMATION CONTACT: For information or questions concerning the proposed project, contact: Mr. Bruce Sexauer, Plan Formulator, U.S. Army Corps of Engineers, Alaska District, EN-CW-PF, P.O. Box 6898, Elmendorf AFB, AK 99506-0898; Phone: 907-753-5619; Fax: (907) 753-2625; e-mail: Bruce.R.Sexauer@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Background: The City of Whittier was incorporated in 1969. Whittier Harbor was constructed in 1970 and was expanded to its existing configuration in 1980. The harbor accommodates a large array of commercial, charter, government, recreation, and subsistence vessels.

This project was authorized by general language in section 5007 of Public Law 119-114, the Water Resources Development Act of 2007.

Purpose and Need for Agency Action: The existing Whittier Harbor is utilized beyond its capacity. The town of Whittier needs to expand the existing

harbor to a more efficient and safe harbor for navigation and moorage. The harbor is not able to appropriately accommodate the needs of larger commercial fishing vessels.

Overcrowding of large vessels often results in increased damages to the vessels and docks. Overcrowding is also a problem for smaller commercial fishing, charter, and recreational vessels that use Whittier Harbor. The turning radius within the harbor is inadequate for these larger vessels. Inadequate boat launching facilities are causing significant upland congestion and delays to all harbor users.

Operators of larger vessels have expressed that they would be interested in using Whittier Harbor on a longer term basis if it were not as crowded and if suitable moorage were available. Many of these operators are known to travel as far as the Pacific Northwest for moorage. If suitable moorage were available in Whittier, they could save the costs of the trip back to the northwestern harbors in the continental US or other Alaska harbors. There are opportunities to save operating costs, and avoid opportunity costs of time for crews of these vessels by providing protected moorage at Whittier.

This EIS will assess the potential environmental impacts of constructing, operating, maintaining an expanded and/or new harbor as well as other reasonable alternatives. The EIS will aid decision making on the Whittier Harbor study by evaluating the environmental impacts of the range of reasonable alternatives, as well as providing a means for public input into the decision making process. USACE is committed to ensuring that the public has ample opportunity to participate in this review.

Preliminary Alternatives: Consistent with NEPA implementation requirements, this EIS will assess the range of reasonable alternatives regarding constructing, operating, and maintaining the proposed Whittier Harbor project. The following types of alternatives have been identified and are subject to modification in response to comments received during the public scoping process.

Structural Alternatives: This set of alternatives will investigate and describe harbor construction alternatives for various fleet sizes. Rubble mound breakwaters would be necessary for wave protection. Significant dredging would be required for the mooring basin and entrance channel and the alternatives may require maintenance dredging.

Nonstructural Alternatives: Nonstructural alternatives have not yet

been identified at this stage of the study process.

No Action Alternative: Under the “no action” alternative, the Whittier Harbor would continue the “status quo” and over time become more crowded and safety issues would elevate.

USACE would appreciate comments regarding whether there are additional alternatives for the Whittier Harbor that should be considered.

Identification of Environmental and Other Issues: USACE intends to address the following environmental issues when assessing the potential environmental impacts of the alternatives in this EIS. Additional issues may be identified as a result of the scoping process. USACE invites comment from Federal agencies; State, local, and tribal governments; and the general public on these and any other issues that should be considered in the EIS:

- Potential impacts on health from the Whittier Harbor project include potential impacts to workers during the construction of the facilities.
- Potential impacts to surface water, tidelands and fauna include turbidity from construction activities.
- Potential impacts on air quality from emissions and from noise during harbor construction and operations.
- Potential cumulative impacts of the past, present, and reasonably foreseeable future actions include impacts resulting from harbor construction.
- Potential impacts to historically significant properties, if present, and on access to traditional use areas.
- Potential impacts on local, regional, or national resources from materials and utilities required for construction and operation.
- Potential impacts on ecological resources, including threatened and endangered species and water quality.
- Potential impacts on local employment, income, population, housing, and public services from harbor construction and operations.

NEPA Process: The EIS for the proposed project will be prepared pursuant to the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and USACE’s NEPA Implementing Procedures (33 CFR parts 230 and 325). Following the publication of this Notice of Intent, USACE will continue the scoping process, prepare and distribute the draft EIS for public review, hold public hearings to solicit public comment on the draft EIS, and publish a final EIS. Not less than 30 days after the publication of the U.S. Environmental Protection Agency’s

Notice of Availability of the final EIS, USACE may issue a Record of Decision (ROD) documenting its decision concerning the proposed action.

EIS Schedule: The draft EIS is scheduled to be published no sooner than June 2010. A 45-day comment period on the draft EIS is planned, which will include public meetings to receive comments. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media.

The final EIS for the Whittier Harbor project is scheduled for no sooner than January 2011. A ROD would be issued no sooner than 30 days after the U. S. Environmental Protection Agency notice of availability of the final EIS is published in the **Federal Register**.

Dated: June 22, 2009.

Patricia S. Opheen,

Chief, Engineering Division.

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DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; DC School Choice Incentive Program; Notice Reopening Fiscal Year (FY) 2009 Competition for the DC School Choice Incentive Program.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.370A.

Summary: On April 23, 2009, we published in the **Federal Register** (74 FR 18567) a notice inviting applications for new awards for FY 2009 for the DC School Choice Incentive Program. The original notice for the FY 2009 DC School Choice Incentive Program competition established a May 26, 2009, deadline date for eligible applicants to apply for funding under this program. The notice in the **Federal Register** required applicants for this competition to submit their applications in paper format by mail or hand delivery. The application package and instructions on the Department’s Web site, however, mistakenly instructed applicants to use the e-Grants.ed.gov Web site. Because of the differing instructions, we are reopening and establishing a new deadline for the submission of applications for the FY 2009 competition for the DC School Choice Incentive Program competition. Applicants must refer to the notice inviting applications for new awards that was published in the **Federal Register** on April 23, 2009 (74 FR