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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE201

Notice of Availability of the Deepwater Horizon Oil Spill Record of Decision (ROD) for the Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS)

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

ACTION: Notice of availability of a Record of Decision.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), notice is hereby given that the *Deepwater Horizon* Federal and State natural resource trustee agencies (Trustees) have issued a Record of Decision (ROD) for the Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS). Based on the Trustees' injury determination established in the Final PDARP/PEIS, the ROD sets forth the basis for the Trustees' decision to select Alternative A: Comprehensive Integrated Ecosystem Alternative. The Trustees' selection of this alternative includes the funding allocations established in the Final PDARP/PEIS.

ADDRESSES: *Obtaining Documents:* You may download the ROD at <http://www.gulfspillrestoration.noaa.gov> or <http://www.doi.gov/deepwaterhorizon>. You may also view the ROD at any of the

public repositories listed at <http://www.gulfspillrestoration.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Courtney Groeneveld at gulfspillrestoration@noaa.gov, mail to: fw4coastalDERPcomments@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 2011, the Trustees initiated a 90-day formal scoping and public comment period for the Draft PDARP/PEIS (76 FR 9327) through a Notice of Intent (NOI) to Begin Restoration Scoping and Prepare a Gulf Spill Restoration Planning PEIS. The Trustees conducted the scoping in accordance with OPA (15 CFR 990.14(d)), NEPA (40 CFR 1501.7), and State authorities. That NOI requested public input to identify and evaluate a range of restoration types that could be used to fully compensate the public for the environmental and recreational use damages caused by the spill, as well as develop procedures to select and implement restoration projects that will compensate the public for the natural resource damages caused by the spill. As part of the scoping process, the Trustees hosted public meetings across all the Gulf States during Spring 2011.

A Notice of Availability of the Draft PDARP/PEIS was published in the **Federal Register** on October 5, 2015 (80 FR 60126). The Draft PDARP/PEIS presented the assessment of impacts of the *Deepwater Horizon* incident on natural resources in the Gulf of Mexico and on the services those resources provide, and determined the restoration needed to compensate the public for these impacts. The Draft PDARP/PEIS presented four programmatic alternatives evaluated in accordance with OPA and NEPA:

- Alternative A (Preferred Alternative): Comprehensive Integrated Ecosystem Restoration Plan based on programmatic Trustee goals;
- Alternative B: Resource-Specific Restoration Plan based on programmatic Trustee goals;
- Alternative C: Continued Injury Assessment and Defer Comprehensive Restoration Plan; and
- Alternative D: No Action/Natural Recovery.

The Trustees provided the public with 60 days to review and comment on the Draft PDARP/PEIS. The Trustees held public meetings in Houma, LA; Long Beach, MS; New Orleans, LA; Mobile, AL; Pensacola, FL; St. Petersburg, FL; Galveston, TX; and Washington, DC, to facilitate public understanding of the document and provide opportunity for public

comment. Additionally, the Trustees solicited public input through a variety of mechanisms, including electronic communications, Trustee Council and individual Trustee public Web sites, and a public comment portal for public comment collection. The Trustees prepared the Final PDARP/PEIS in consideration of the public comments received and included a summary of the comments and responses in the Final PDARP/PEIS.

A Notice of Availability of the Final PDARP/PEIS was published in the **Federal Register** on February 19, 2016 (81 FR 8483). In the Final PDARP/PEIS, the *Deepwater Horizon* Trustees presented their findings on the extensive injuries to multiple habitats, biological species, ecological functions, and geographic regions across the northern Gulf of Mexico that occurred as a result of the *Deepwater Horizon* incident, as well as their programmatic plan, including funding allocations, for restoring those resources and the services they provide. The Final PDARP/PEIS describes the framework by which subsequent project specific restoration plans will be developed.

As documented in the Record of Decision (ROD) signed on March 22, 2016, the Trustees have: Determined the extent of injury to natural resources and services caused by the *Deepwater Horizon* oil spill incident; analyzed alternatives to restore those injuries; considered environmental impacts associated with the restoration alternatives, including the extent to which any adverse impacts could be mitigated; considered public and agency comments; considered the funding allocations required for restoration; and developed a governance approach for implementing restoration. Based on these considerations and the determination of injury, the ROD presents the Trustees' decision to select their Preferred Alternative, Alternative A: Comprehensive Integrated Ecosystem Restoration and the associated funding allocation, for implementation. The Trustees also conclude that all practicable means to avoid, minimize, or compensate for environmental harm from the action have been considered programmatically in the PDARP/PEIS, and that project-specific measures will be adopted at a later date during subsequent restoration planning.

The Trustees considered this programmatic restoration planning decision in light of the proposed settlement among BP, the United States, and the States of Louisiana, Mississippi, Alabama, Florida, and Texas to resolve BP's liability for natural resource damages associated with the *Deepwater*

Horizon incident. Under this proposed settlement, BP would pay a total of \$8.1 billion for restoration to address natural resource injuries (this includes \$1 billion already committed for early restoration), plus up to an additional \$700 million to respond to natural resource damages unknown at the time of the settlement and/or to provide for adaptive management. The proposed Consent Decree for the proposed settlement was the subject of a separate public notice and comment process; the Notice of Lodging of the proposed Consent Decree under the Clean Water Act and Oil Pollution Act was published in the **Federal Register** on October 5, 2015 (80 FR 60180).

Administrative Record

The documents included in the Administrative Record for the final PDARP/PEIS decision can be viewed electronically at the following location: <http://www.doi.gov/deepwaterhorizon/adminrecord>.

The Trustees opened a publicly available Administrative Record for the Natural Resource Damage Assessment for the *Deepwater Horizon* oil spill, including restoration planning activities, concurrently with publication of a 2010 Notice of Intent to Conduct Restoration Planning (75 FR 60802) (pursuant to 15 CFR 990.45).

Authorities

The authorities for this action are the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and the implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: March 23, 2016.

Eileen Sobeck,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE234

Taking of Marine Mammals Incidental to Specified Activities; Coupeville Timber Towers Preservation Project

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with 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 Transportation (WSDOT) to take, by harassment, small numbers of 10 species of marine mammals incidental to construction activities for the Coupeville Timber Tower Preservation Project in Washington State, between July 15, 2016, and July 14, 2017.

DATES: This authorization is effective from July 15, 2016, through July 14, 2017.

FOR FURTHER INFORMATION CONTACT: Shane Guan, 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 allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

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

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed

authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On June 9, 2015 WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to construction associated with the Coupeville Timber Towers Preservation Project at the Coupeville Ferry Terminal in Washington State, between July 15, 2016, and July 14, 2017. On September 22, WSDOT submitted a revised IHA application which incorporated rigorous monitoring and mitigation measures that would prevent the take of humpback whales and the Southern Resident killer whales, which are listed under the Endangered Species Act (ESA). The revised IHA application requests the take of small numbers of 10 marine mammal species incidental to the Coupeville Timber Towers Preservation Project. NMFS determined that the IHA application was complete on October 1, 2015. NMFS proposed to authorize the Level B harassment of the following marine mammal species/stocks: harbor seal, California sea lion, Steller sea lion (eastern Distinct Population Segment, or DPS), northern elephant seal, killer whale (West Coast transient stock), gray whale, minke whale, harbor porpoise, Dall’s porpoise, and Pacific white-sided dolphin.

Description of the Specified Activity

A detailed description of the WSDOT’s Coupeville Timber Towers Preservation Project is provided in the **Federal Register** notice for the proposed IHA (81 FR 3378; January 21, 2016).

WSDOT proposes to conduct Coupeville Timber Towers Preservation Project at the Washington Coupeville Ferry Terminal on Whidbey Island, Washington (Figure 1–2 of the IHA application), to upgrade the existing transfer span towers at the Coupeville Ferry Terminal. These activities include impact pile driving and vibratory pile removal.

Eight 24-inch diameter hollow steel piles would be installed to support the towers, and concrete caps will be installed on top of the towers in order to support the headframe that houses the pulleys for the transfer span cables. Five to seven 12-inch timber piles would be removed to allow room for the new steel piles to be installed. The remaining tower timber piles would remain in place to help support the structure. Up to 6 temporary 24-inch