

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council**

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Conservation/Environmental, Marine Business/Ports/Industry, and Research. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members or alternates should expect to serve 3-year terms, pursuant to the Council's Charter.

**DATES:** Applications are due by December 9, 2005.

**ADDRESSES:** Application kits may be obtained from Andrew Palmer, Advisory Council Coordinator, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Andrew Palmer, Advisory Council Coordinator, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362, (360) 457-6622 extension 15, e-mail [andrew.palmer@noaa.gov](mailto:andrew.palmer@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Sanctuary Advisory Council members and alternates serve three-year terms. The Advisory Council meets bi-monthly in public sessions in communities in and around the Olympic Coast National Marine Sanctuary.

The Olympic Coast National Marine Sanctuary Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, five Federal government agencies and one federally funded program serve as non-

voting, *ex officio* members. Since its establishment, the advisory council has played a vital role in advising the sanctuary and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, the Council members serve as a communication bridge between constituents and the Sanctuary staff.

**Authority:** 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 10, 2005.

**Daniel J. Basta,**

*Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 052405C]

**Small Takes of Marine Mammals Incidental to Specified Activities; Maintenance Dredging Around Pier 39, San Francisco, California**

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

**ACTION:** Notice; issuance of incidental harassment authorization.

**SUMMARY:** In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Bay Marina Management Incorporated (BMMI) to take marine mammals by Level B harassment incidental to dredging on the west side of the Pier 39 Marina on the San Francisco waterfront, CA.

**DATES:** Effective from October 17, 2005, through October 16, 2006.

**ADDRESSES:** A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Small\\_Take/](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/)

[smalltake\\_info.htm#applications](#).

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext 166.

**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, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than 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, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking 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.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of 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"].

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 authorization for the incidental harassment of small numbers of marine mammals. Within 45 days of

the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

On August 9, 2004, NMFS received an application from BMMI requesting an IHA for the take, by harassment, of small numbers of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to the maintenance dredging the I, J, and K Docks on the west side of Pier 39 Marina on the San Francisco waterfront, California.

#### Description of the Activity

BMMI will perform maintenance dredging using a small, self-contained clamshell-style crane barge between docks I, J, and K at the Pier 39 west marina. These maintenance measures are necessary to maintain safe navigation depths at the marina, which currently has reduced water depths attributed to the accretion of bay sediment. The dredging at Pier 39 will remove sediment to create water depths in the project area of 9 ft (2.7 m) Mean Lower Low Water (MLLW), plus an additional two-foot overdredge allowance. Dredging design area limits (footprints) include the faces, approaches, and entrance channels to each berthing area up to the limit of the adjacent pier. Dredging will occur between June 1 and November 30 to avoid impacts to steelhead trout and chinook salmon.

Dredging operations at the Pier 39 west marina will occur in late fall of 2005 or the summer of 2006 and are expected to take approximately one to two weeks to complete. Dredge machinery will operate from 8 a.m. to 3:30 p.m. daily. Approximately 13,000 yd<sup>3</sup> (9,939 m<sup>3</sup>) of material will be removed. Dredged material will be tested for pollutants and toxins by the Dredge Material Management Office prior to approval to begin dredging, and dredged materials will be deposited in accordance with local, state and Federal regulations. Once removed, the dredged material will be transferred to Piers 96/98, which are owned and operated by the Port of San Francisco, and from there it will be disposed of at an approved upland disposal site.

The proposed dredging of the Pier 39 west berthing area will focus on the channels and slips of I and J docks and half of the channel between J and K docks. The original K dock was destroyed by the combined weight of hundreds of California sea lions that frequently use the area as a haul-out. Pier 39 replaced the damaged dock with a number of ten by twelve-foot floats for

the sea lions to use. Since there are no actual berthing sites at K dock, no dredging will be necessary in the area immediately surrounding or under K dock. The crane barge will be situated at the furthest distance possible from K dock during each dredging episode. The closest that the barge will be to the K dock haul-out is when dredging the channel between J and K docks. When the barge is dredging this channel it will be moored to the bayside of J dock and extend the clamshell dredge arm out into the channel, towards K dock. Since the distance between J and K docks is 100 ft (30 m) and the barge is 30 ft (9 m) wide, it will never be positioned closer than 50 ft (15 m) to K dock at any time during the dredging project.

#### Comments and Responses

A notice of receipt of the BMMI application and proposed IHA was published in the **Federal Register** on September 6, 2005 (70 FR 52990). The **Federal Register** notice also invited comments on NMFS's associated draft Environmental Assessment (EA), which was posted on the NMFS website. During the comment period, NMFS received one comment from the Marine Mammal Commission (MMC).

*Comment:* The MMC recommended that the requested authorization be issued, provided that the mitigation and monitoring activities proposed in the application and NMFS's **Federal Register** notice are carried out as described.

*Response:* The mitigation and monitoring activities described in the application and the **Federal Register** notice have been incorporated into the requirements of the IHA.

#### Description of Habitat and Marine Mammals Affected by the Activity

The marine mammal species known to be present at the Pier 39 Marina area are the California sea lion (*Zalophus californianus*) and the Pacific harbor seal (*Phoca vitulina*). Since 1993, a single adult male Steller sea lion (*Eumetopias jubatus*) has been observed hauled out on K dock intermittently during the months of July and August, and occasionally in September (30 sightings in the last 10 years). However, this project will not affect the Steller sea lion because dredging activities will be halted if a Steller sea lion is observed.

Additional information on these species can be found in Marine Mammal Stock Assessment Reports, which are available online at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html).

#### California Sea Lions

California sea lions range from southern Mexico to southwestern Canada. In the United States, they breed during July after pupping in late May to June, primarily in the Channel Islands of California. Most individuals breed on the Channel Islands off southern California and off Baja and mainland Mexico, although a few pups have been born on Ano Nuevo Island and this year a pup was born on the docks at Monterey and subsequently transferred to Ano Nuevo Island with its mother. Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

Since nearing extinction in the early 1900's, the California sea lion population has increased and is now growing at a rate of 5.4 to 6.1 percent per year (based on pup counts) with an estimated minimum population of 138,881 animals. Actual population numbers may be as high as 237,000 to 244,000 animals. The population is not listed as "endangered" or "threatened" under the Endangered Species Act (ESA), nor is this species listed as "depleted" or as a "strategic stock" under the MMPA.

California sea lions first appeared at Pier 39 in September, 1989. Numbers of hauled-out sea lions were relatively low the first year and K Dock was only used as a haul out from late summer through the winter. Within a few years, larger numbers of sea lions were observed at K Dock and they began using the haul-out throughout the year. The Marine Mammal Center (MMC) began monitoring California sea lions at Pier 39 in the late 1990's and counts indicate peak usage of K dock at Pier 39 in May and early June, just prior to the breeding season. Although numbers decrease during mid-summer (when most adults relocate to the rookeries for pupping and breeding) some sea lions of all age classes remain in the area and continue to haul out at Pier 39. Within the dredging work window (June 1 to November 30) the largest numbers of California sea lions are found at K Dock in the late summer and fall. The highest number of individuals ever observed at once between June 1 and November 30 at Pier 39 to date was 1244, in August of 2003. If the number of individuals observed at one count is averaged by month, from June to November, since 2000, the averages range from 169 for

July to 709 in September. Since monitoring began in 1991, only 10 California sea lion pups have been observed at Pier 39, in 1997 and 1998. These pups, which were all weaned, most likely hauled out at K Dock due to El Nino, and pups are not expected at the project site in "normal" years.

#### *Pacific Harbor Seals*

Although not commonly observed at Pier 39, Pacific harbor seals have been documented as visitors to K dock numerous times in the past decade. Harbor seals range from Baja California in Mexico northward to the Aleutian Islands of Alaska. The population estimate for the California stock is 27,863 individuals (Caretta *et al.*, 2004) and is relatively stable.

Harbor seals inhabit coastal waters within their range and prefer sheltered bays and inlets to the exposed coastline. Daily haul-out behavior of harbor seals is typically dependent on the tides, weather and time of day. Harbor seals exhibit seasonal variation in reproductive timing depending on geography. The pupping season for California populations is in the spring, with populations in the San Francisco Bay typically bearing young from March 15 through May 31 (Green *et al.*, 2001). There are two active pupping sites in the San Francisco Bay, Mowry Slough in the South Bay and Castro Rocks in the North Bay. Pups have been observed at Yerba Buena Island and Corte Madera Marsh in the San Francisco Bay. No births have been witnessed at these locations, but Yerba Buena is thought to be a potential pupping site. No harbor seal pups have ever been seen at Pier 39.

Annual counts of harbor seals at Pier 39 range from 0 seals observed in 1999 and 2004, to a high of nine observations in 2000 for a total of 28 observations between 1997–2004. No more than two harbor seals have been observed hauled out simultaneously at any given time at K Dock. No harbor seals have been observed hauling out at Pier 39 July through September. No pups have been observed at Pier 39. Observations by MMC volunteers indicate that observed harbor seals at Pier 39 tend to distance themselves from the California sea lions hauling out in the vicinity.

#### **Potential Effects of Activities on Marine Mammals**

The applicant is authorized to take California sea lions and Pacific harbor seals, by Level B harassment, incidental to the dredging activities described previously. Level B harassment may occur if hauled animals flush the haulout and/or move to increase their distance from dredging-related

activities, such as noise associated with dredging, presence of a crane barge, the presence of workers, or unfamiliar activity in proximity to the haulout site. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Sudden brief noises have been shown to elicit startle reactions in some pinnipeds. Novel looming visual stimuli may induce similar startle reactions in pinnipeds. Daily engine starts and movements of the dredge bucket and vessel may induce startled and/or flight behavior in marine mammals using K dock as a haul out. However, this area has become a tourist spot for viewing sea lions, and the current population of animals utilizing K dock is accustomed to human activities and regular noise levels from people, traffic, use of nearby boat slips, and other marine operations. If animals do flush into the water, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site. Many factors contribute to the degree of behavioral modification, if any, including seasonality, group composition of the pinnipeds, type of activity they are engaged in and what noises they may be accustomed to experiencing. Short-term reactions such as startle or alert reactions are unlikely to disrupt behavior patterns such as migrating, breeding, feeding and sheltering, nor would they be likely to result in serious injury to marine mammals.

The small, self-contained, clamshell dredge used for this activity may produce noise of a sufficient level to behaviorally harass marine mammals at K dock. Measured sound exposure levels (SELs) of similar equipment ranged between 75–88 dBA (re 20 microPa) measured at 15 m (50 feet) (the closest distance that the dredge unit will be to K dock) (Boeing, 2005). Results of an ongoing study at Vandenberg Air Force Base of the effects of rocket launches on pinnipeds indicate that the percentage of Pacific harbor seals leaving the haul-out increases with noise level up to an SEL of approximately 100 dBA, after which almost all seals leave, although recent data have shown that an increasing percentage of seals have remained on shore during the noise, and those that remain are adults. Though harbor seals are more sensitive to audio stimuli than sea lions, these results indicate that animals are flushed at an SEL less than 100 dBA, and it is possible that marine mammals at K Dock may modify their

behavior as a result of the lesser dredge noise.

If startle reactions were accompanied by large-scale movements of marine mammals, such as stampedes into the water, the disruption could escalate into Level A harassment and could result in injury of individuals, especially if pups were present. However, due to the uniqueness of this particular haul-out area, the unlikely presence of pups, and the proposed shut-down procedures should pups be sighted, NMFS believes there is a very low likelihood of such injury occurring at the Pier 39 site. Specifically, the haul-out consists of many separate floating platforms that can hold up to about 25 marine mammals each. If disrupted to the point of flushing off the platforms, pinnipeds can quickly leap or roll into the water in any direction off the relatively small platforms, avoiding a dangerous stampede-like situation that may occur at normal haul-out locations such as exposed rocks. Additionally, marine mammal pups use this haul-out very infrequently (approximately 10 pups have been sighted at K Dock, in 1997 and 1998, during El Nino), further reducing potential harm to the species.

Over the last 13 years, BMMI has observed the sea lions either ignore various unfamiliar intrusions and remain hauled out, or adapt to them and eventually become habituated and return to their normal behavior. Disturbance from these proposed dredging activities is expected to have a only a short-term negligible impact to a small number of California sea lions relative to their population size and a few Pacific harbor seals. At a maximum, short-term impacts are expected to result in a temporary reduction in utilization of K dock as a haulout site while work is in progress or until seals habituate to the disturbance. The project is not expected to result in any permanent reduction in the number of animals at Pier 39. NMFS agrees with BMMI that effects will be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

#### **Mitigation**

To minimize disturbance of marine mammals from visual and acoustic stimuli associated with the dredging activities, BMMI will use a small (relative to the range of sizes of equipment that could accomplish the task) clamshell dredge that can easily target the specific areas to be dredged. The smaller equipment will also minimize the amount of turbidity resulting from the dredging activities. The dredge material will be

immediately loaded onto a barge and transported to a nearby terrestrial disposal site at Piers 96 and 98, which will allow for a shorter project duration.

When not in use, the clamshell dredge and dredge barge will be parked as far as feasible from the K Dock. After starting engines in morning, the clamshell dredge will be moved as slowly as possible to the area to be dredged and the dredge head lowered slowly and carefully into the water.

As mentioned previously, if a Steller sea lion of any age or a marine mammal pup of any species is spotted at any time during dredging operations, operations will cease until the animal has left the area.

### Monitoring

The K dock haulout will be monitored periodically during dredging activities by two NMFS-approved observers according to the following schedule:

(1) During the week prior to the commencement of dredging activities, morning counts will be taken every morning at the same time. One afternoon count will be taken at approximately the same time the dredging is scheduled to stop in the following days.

(2) During the dredging operations:

(a) One count will be taken every morning before dredging work begins and every afternoon once operations cease.

(b) On the first day of dredging and on one other day near the end of dredging operations, monitors will be present all day (starting one hour before operations begin and remaining until 2 hours after operations cease) and they will document specific behaviors as they relate to specific aspects of the dredging operations and other activities. An additional count will be conducted 2 hours after dredging operations cease. Rates of departure and arrival of animals from/to the haulout will be noted.

(3) Following completion of the dredging:

(a) Morning counts (taken at approximately same time as those taken previously (See 1)) will be made every day for a week.

(b) An afternoon count will be conducted the day after dredging ceases and on the last day of the post-dredging monitoring.

(4) During all monitoring periods the following data will be recorded: date, time, observer, tidal height, species present, maximum number of animals hauled out, number of adults and sub-adults, number of males and females (if possible), any observed behavioral disturbances to the animals, and the number of animals disturbed (for

example, if animals flushed, reports should include the number of animals that returned to the water, and those that remained hauled out). During periods of dredging a description of dredging activities will also occur (including location of dredge, i.e., between J and K Docks, or between I and J Docks).

### Reporting

A draft report will be submitted to the NMFS Southwest Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources, within 90 days after project completion. A final report will be submitted within 30 days of receiving NMFS' comments, if any, on the draft report. The Report will contain, analyze, and summarize the information required under Monitoring, above. BMMI will share data collected as a result of these monitoring activities with other interested parties, such as the Marine Mammal Center and other boat marinas.

### Numbers of Marine Mammals Expected to be Harassed

The highest number of California sea lions ever counted at one time on the K Dock between June 1 and November 30 was 1244 individuals in August 2003. The average number of individuals counted at one time within the work window since 2000 is lowest in July (169) and highest in September (709). The effects of the proposed dredging activities are expected to be limited to short-term startle responses and localized behavioral changes. Based on an average of 169 to 709 animals over the maximum of 14 days, NMFS estimates that California sea lions could be exposed to audio or visual stimulus likely to cause harassment between 2360 and 9930 times. However, based on review of the Pier 39 observer logs maintained over the last 14 years, which indicate that sea lions may remain in the area and haul out for several days in a row at the K dock, NMFS estimates that between 1180 to 4965 individual animals will be harassed. The highest total number of harbor seals ever seen in one month between June 1 and November 30 was 3 in November of 1997. NMFS anticipates that no more than 3 Pacific harbor seals will be harassed by this activity. These are small numbers relative to the size of the affected species or stocks.

### Possible Effects of Activities on Marine Mammal Habitat

NMFS anticipates that the action will result in minor and short-term effects on

marine mammal habitat, including a temporary increase in the turbidity in the area of the dredging and a temporary decrease in the quality of K dock as a haul-out site as a result of increased visual and audio stimuli.

### Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for California sea lions or Pacific harbor seals in California waters, and thus, there are no anticipated effects on their availability for subsistence uses.

### Endangered Species Act

Though a single Steller sea lion has infrequently been sighted at the K Dock, BMMI plans to cease dredging operations immediately if one is seen, and not begin dredging again until the animal has left the area of its own volition. NMFS does not anticipate any impacts to Steller sea lions to result from the issuance of the IHA.

In the 1998 programmatic Biological Opinion addressing dredging in San Francisco Bay, NMFS established a June 1 to November 30 work window for dredging activities in the San Francisco Bay to avoid impacts to steelhead trout and Chinook salmon. BMMI proposes to dredge between June 1 and November 30, and therefore NMFS does not anticipate any impacts to ESA-listed fish.

### National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) on the Issuance of an IHA for the Dredging at Pier 39, posted the EA on the NMFS website concurrently with the **Federal Register** receipt of application notice, and received public comment on both the proposed IHA and the EA. NMFS issued a Finding of No Significant Impact on October 13, 2005. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

### Conclusions

NMFS has determined that the dredging activities described in this document and in the application for an IHA may result in short-term and localized changes in behavior by small numbers of California sea lions and Pacific harbor seals. While behavioral modifications may be made by the seals, including temporarily vacating the K Dock haulout, this action is expected to have a negligible impact on the animals. In addition, no take by injury or death is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation

measures mentioned previously in this document.

NMFS has determined that the proposed activity would result in the harassment of small numbers of California sea lions and Pacific harbor seals, and that the takings will have no more than a negligible impact on these marine mammal stocks. Accordingly, NMFS has issued an IHA to BMMI for the harassment of small numbers of California sea lions and Pacific harbor seals incidental to dredging around Pier 39, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

#### Authorization

NMFS has issued a 1-year IHA to BMMI for the take, by harassment, of small numbers of California sea lions and Pacific harbor seals incidental to maintenance dredging around I, J, and K Docks at Pier 39 in San Francisco, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Dated: November 14, 2005.

**James H. Lecky,**

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

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housing units, associated structures, and landscape features.

**Authority:** 36 CFR 800.14.

**DATES:** The program comment went into effect on November 18th, 2004.

**ADDRESSES:** Address comments to: HQ AF/ILE, Environmental Programs, ATTN: Lt Col Douglas Burkett, 1260 Air Force Pentagon, Washington DC, 20030-1260 (AIR FORCE) Commander, Naval Facilities Engineering Command (BDD), ATTN: Dr. Jay Thomas, 1322 Patterson Ave SE Ste 1000, Washington Navy Yard DC 20374-5065.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Douglas Burkett at (703) 604-0632 or Dr. Jay Thomas at (202) 685-9196.

**SUPPLEMENTARY INFORMATION:** Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, requires Federal agencies to consider the effects of these undertakings on historic properties and provide the Council a reasonable opportunity to comment with regard to such undertakings. The Council issued the regulations that set forth the process through which Federal agencies may comply with these requirements. Those regulations are codified under 36 CFR part 800 ("Section 106 regulations"). The Section 106 regulations, under 36 CFR 800.14(e), provide that an agency may request the Council for a "Program Comment" allowing it to comply with Section 106 for a category of undertakings in lieu of conducting a separate review for each individual undertaking under the regular consultation process.

#### I. Background

According to the requirements for obtaining a Program Comment, the Navy and Air Force formally requested the Council comment on Capehart and Wherry Era family housing and associated structures and landscape features in lieu of requiring separate reviews under §§ 800.4 through 800.6 of the Section 106 regulations for each individual undertaking. The Navy and Air Force identified the category of undertakings as maintenance, repair, layaway, mothballing, privatization and transfer out of federal agency ownership, substantial alteration through renovation, demolition, and demolition and replacement, affecting Navy and Air Force family housing built between 1949 and 1962 termed 'Capehart and Wherry'. The Air Force and Navy also specified the likely effects that these management actions would have on historic properties and the steps the Air Force and Navy would take to ensure that the effects are taken

into account. The Air Force and Navy included in their request to the Council the public comments that it received from a 60-day public comment opportunity provided through an earlier notice (69 FR 48462, August 10, 2004). The Council subsequently published a notice of intent to issue the Program Comment (69 FR 54763, September 10, 2004) and notified the State Historic Preservation Officers (SHPOs), the National Conference of State Historic Preservation Officers (NCSHPO), the National Trust for Historic Preservation (NTHP), Tribal Historic Preservation Officers (THPOs), and the National Association of Tribal Historic Preservation Officers, and requested their views on the Air Force and Navy's proposed Program Comment. During its November 18, 2004 business meeting, the Council membership (with the Department of Defense recusing itself) voted unanimously to approve and issue the Program Comment found at the end of this notice. The vote was 16 in favor of approving and issuing the Program Comment, 0 votes against, and 1 abstention (the Department of Defense), with 3 voting members absent.

Neither the Council nor the Air Force and Navy have engaged in consultation with Indian Tribes and Native Hawaiian organizations, pursuant to 36 CFR 800.14(e)(4), since such consultation is not warranted. All Air Force and Navy actions considered under this Program Comment will be undertaken on Air Force and Navy property. The Program Comment will not affect historic properties of religious and cultural significance, regardless of location, to any Indian tribe or Native Hawaiian organization since any Capehart and Wherry actions that would affect these types of properties are specifically excluded under the Program Comment.

#### II. Response to Public Comments

Clarify a separate step for identifying properties of particular importance. The proposed comment does not include a specific process for identifying properties of particular importance. This Program Comment now includes a specific process of identifying properties of particular importance. The Air Force and Navy will notify the Council, NCSHPO, and NTHP whether any of these properties are of particular importance and permits an opportunity to review the findings.

Report for the General Public: The requirement to prepare a report for the general public should be separated out from the requirement to revise the historic context study, and should be more clearly delineated as a separate deliverable item. The Program Comment

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Program Comment for Capehart and Wherry Era Housing and Associated Structures and Landscape Features (1949-1962)

**AGENCY:** Department of the Navy, Department of the Air Force, and Department of the Army.

**ACTION:** Notice of Approval of Program Comment on Air Force and Navy Capehart and Wherry Era Housing.

**SUMMARY:** On November 18th, 2004 the Advisory Council on Historic Preservation (Council) approved a program comment that facilitates the Navy's and Air Force's compliance with the National Historic Preservation Act, with regard to management of their inventories of Capehart and Wherry Era