



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

AUG 08 2019

Kevin M. Bartoy  
Environmental Program Manager –  
Design, Construction, and Maintenance  
WSDOT Ferries Division (WSF)  
2901 3rd Avenue, Suite 500  
Seattle, Washington 98121-3014

Dear Mr. Bartoy:

Enclosed is an Incidental Harassment Authorization (IHA) issued to the Washington Department of Transportation, under the authority of Section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), to take small numbers of marine mammals by Level B harassment incidental to the Bremerton Ferry Terminal Dolphin Relocation Project in Washington State.

You are required to comply with the conditions contained in this IHA. In addition, you must cooperate with any Federal, State or local agency monitoring the impacts of your activities. The Authorization requires monitoring the presence of marine mammals, mitigating adverse impacts to the lowest level practicable, and reporting any behavioral modifications resulting from your activity as observed by qualified individuals.

If you have any questions concerning the IHA or its requirements, please contact Amy Fowler, Office of Protected Resources, NMFS, at (301) 427-8401.

Sincerely,

A handwritten signature in black ink that reads "Donna S. Wieting".

Donna S. Wieting, Director  
Office of Protected Resources

Enclosure



Printed on Recycled Paper





## INCIDENTAL HARASSMENT AUTHORIZATION

The Washington Department of Transportation (WSDOT) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to harass marine mammals incidental to in-water pile driving at the Bremerton ferry terminal in Bremerton, Washington (WA), when adhering to the following terms and conditions.

1. This Incidental Harassment Authorization (IHA) is valid for a period of one year from the date of issuance.
2. This IHA is valid only for in-water pile installation and removal associated with the Bremerton Ferry Terminal Dolphin Relocation Project in Bremerton, WA.
3. General Conditions
  - (a) A copy of this IHA must be in the possession of WSDOT, its designees, work crew personnel, and Protected Species Observers (PSOs) operating under the authority of this IHA.
  - (b) The species authorized for taking are the Pacific harbor seal (*Phoca vitulina richardii*), Northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), and common dolphin (*Delphinus delphis*).
  - (c) The taking, by Level A and B harassment, is limited to the species listed in condition 3(b). Table 1 provides the authorized number of takes per species and stock.
  - (d) The taking, by injury (Level A harassment), serious injury, or death of any of species listed in condition 3(b) of this IHA is prohibited.
  - (e) The taking, by Level A harassment, Level B harassment, serious injury, or death, of marine mammal species not identified in condition 3(b) is prohibited.



#### 4. Mitigation Measures

The holder of this IHA is required to implement the following mitigation measures:

- (a) For in-water construction, heavy machinery activities other than pile driving (e.g., use of barge-mounted excavators, or dredging), if a marine mammal comes within 10 m, WSDOT must cease operations and reduce vessel speed to the minimum level required to maintain steerage and safe working conditions.
- (b) WSDOT is required to conduct briefings for construction supervisors and crews, the monitoring team, and WSDOT staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.
- (c) WSDOT is required to employ Protected Species Observers (PSOs) to conduct marine mammal monitoring.
- (d) Marine mammal monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone (Table 2), animals must be allowed to remain in the shutdown zone (*i.e.*, must leave of their own volition) and their behavior must be monitored and documented.
- (e) If a marine mammal is entering or is observed within an established shutdown zone (Table 2), pile driving must be halted or delayed. Pile driving may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone; 15 minutes have passed without subsequent detections of small cetaceans and pinnipeds; or 30 minutes have passed without subsequent detections of large cetaceans.
- (f) WSDOT must coordinate with local marine mammal research network(s) to obtain marine mammal sightings and acoustic detection data. Prior to the start of pile driving each day, WSDOT must contact the Orca Network and/or the Center for Whale Research to get real-time information on the presence or absence of marine mammals prior to starting any pile driving.
  - i. WSDOT must implement shutdown measures if Southern Resident killer whales (SRKW) are sighted in the vicinity of the project and are approaching the Level B harassment zone during in-water construction activities.

- ii. If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether the animal is a SRKW or a transient killer whale, it must be assumed to be a SRKW and WSDOT must implement the shutdown measures identified in 4(e).
- (g) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period, as indicated in condition 4(e) above, has elapsed.

## 5. Monitoring Measures

The holder of this IHA is required to abide by the following marine mammal and acoustic monitoring measures:

- (a) Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:
  - i. Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used.
  - ii. Other PSOs may substitute education (degree in biological science or related field) or training for experience.
  - iii. Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction.
  - iv. WSDOT must submit PSO CVs for approval by NMFS prior to the onset of pile driving.
- (b) PSOs must have the following additional qualifications:
  - i. Ability to conduct field observations and collect data according to assigned protocols.
  - ii. Experience or training in the field identification of marine mammals, including the identification of behaviors.

- iii. Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.
  - iv. Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior.
  - v. Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.
- (c) For all pile driving activities, two land-based PSOs and one monitoring boat with one PSO and a boat operator must monitor the Level A and Level B harassment zones.

## 6. Reporting

The holder of this IHA is required to:

- (a) Submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the completion of marine mammal and acoustic monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the following elements:
  - i. Dates and times (begin and end) of all marine mammal monitoring.
  - ii. Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, impact or vibratory).
  - iii. Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state).
  - iv. The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.
  - v. Age and sex class, if possible, of all marine mammals observed.
  - vi. PSO locations during marine mammal monitoring.

- vii. Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting).
  - viii. Description of any marine mammal behavior patterns during observation, including direction of travel.
  - ix. Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (total estimated take may be approximated by extrapolating takes documented in observed area to total ensonified area).
  - x. Detailed information about any implementation of any mitigation triggered (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any.
  - xi. Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals.
- (b) Reporting injured or dead marine mammals:
- i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as serious injury, or mortality, WSDOT must immediately cease the specified activities and report the incident to the NMFS Office of Protected Resources (301-427-8401) and the West Coast Region Stranding Coordinator (866-767-6114). The report must include the following information:
    1. Time and date of the incident;
    2. Description of the incident;
    3. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
    4. Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
    5. Species identification or description of the animal(s) involved;
    6. Fate of the animal(s); and
    7. Photographs or video footage of the animal(s).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with WSDOT to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS.

- ii. In the event WSDOT discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), WSDOT must immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS. The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether additional mitigation measures or modifications to the activities are appropriate.
- iii. In the event that WSDOT discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT must report the incident to the Office of Protected Resources, NMFS, and the West Coast Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

- 7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

  
\_\_\_\_\_  
Donna S. Wieting,  
Director, Office of Protected Resources  
National Marine Fisheries Service

AUG 08 2019  
\_\_\_\_\_  
Date

**Table 1. Authorized Takes by Species and Stock**

<b>Species</b>	<b>Stock</b>	<b>Level B</b>	<b>Level A</b>	<b>Total</b>
Harbor seal	Washington Northern Inland Waters	465	0	465
Northern elephant seal	California Breeding	9	0	9
California sea lion	U.S.	621	0	621
Steller sea lion	Eastern U.S.	6	0	6
Killer whale	West Coast Transient	12	0	12
Gray whale	Eastern North Pacific	5	0	5
Humpback whale	California/Oregon/Washington	5	0	5
Minke whale	California/Oregon/Washington	5	0	5
Harbor porpoise	Washington Inland Waters	69	0	69
Dall's porpoise	California/Oregon/Washington	15	0	15
Common dolphin	California	7	0	7

**Table 2. Shutdown Distances for Pile Driving Activities**

<b>Pile type, size &amp; pile driving method</b>	<b>Shutdown distance (m)</b>				
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid
36-inch indicator pile installation	10	10	25	10	10
36-inch indicator pile removal	10	10	10	10	10
36-inch steel dolphin pile removal	25	10	35	10	10
36-inch steel dolphin pile installation	25	10	35	10	10
30-inch steel dolphin pile installation	25	10	25	10	10