

Please include with your comments any supporting data or literature citations to help inform our final decision on the Port's request for an MMPA authorization.

Dated: July 21, 2014.

Donna S. Wieting,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC863

Taking of Marine Mammals Incidental to Specified Activities; Mukilteo Ferry Terminal Construction Work

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 the Marine Mammal Protection Act (MMPA) regulations, 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 eight species of marine mammals incidental to construction activities at the Mukilteo Multimodal Ferry Terminal in Mukilteo, Snohomish County, Washington, between September 2014 and August 2015.

DATES: Effective September 1, 2014, through August 31, 2015.

ADDRESSES: Requests for information on the incidental take authorization should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation 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, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

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

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 August 30, 2013, WSF submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of eight marine mammal species incidental to construction work associated with the Mukilteo Ferry Terminal replacement project in Mukilteo, Snohomish County, Washington. The new terminal will be located to the east of the existing location at the site of the former U.S.

Department of Defense Fuel Supply Point facility, known as the Tank Farm property, which includes a large pier extending into Possession Sound (Figure 1-3 of the WSF IHA application). Completion of the entire project will occur over 4 consecutive years. WSF plans to submit an IHA request for each consecutive year of construction. The current IHA application is for the first year of construction, which is limited to removing the Tank Farm Pier.

After receiving NMFS's comment, on October 17, 2013, WSF submitted a revised IHA application. The action discussed in this document is based on WSF's October 17, 2013, IHA application.

Description of the Specified Activity

Detailed description of the WSDOT's Mukilteo Ferry Terminal construction activities is provided in the **Federal Register** notice for the proposed IHA (78 FR 72643; December 3, 2013). Since that time, no changes have been made to the proposed construction activities at the Mukilteo Ferry Terminal. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to WSDOT was published in the **Federal Register** on December 3, 2013. That notice described, in detail, WSDOT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission recommends NMFS issue the IHA to WSDOT, subject to inclusion of the proposed mitigation and monitoring measures described in the proposed IHA. NMFS agrees with the Commission's recommendation and issued the IHA with mitigation and monitoring measures described below.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the construction area include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in the vicinity of the project area in Washington waters can be found in Caretta *et al.* (2011), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf>. Specific information concerning these species in the vicinity of the action area is provided in the **Federal Register** notice for the proposed IHA and in WSDOT's IHA application. Therefore, it is not repeated here.

Potential Effects of the Specified Activity on Marine Mammals

The effects of underwater noise from in-water vibratory pile removal associated with the Mukilteo Ferry Terminal Tank Farm removal has the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the action area. The Notice of Proposed IHA included a discussion of the effects of anthropogenic noise on marine mammals, which is not repeated here. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of WSDOT's activities given the strong likelihood that marine mammals would avoid the immediate vicinity of the pile driving area.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term local water turbidity caused by in-water construction due to pile removal and pile driving. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA and are not repeated here.

Potential Impacts on Availability of Affected Species or Stocks for Taking for Subsistence Uses

No subsistence harvest of marine mammals occurs in the action area.

Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, 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.

For WSDOT's Mukilteo Ferry Terminal construction work, NMFS is requiring WSDOT to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the in-water construction activities.

Since the measured source levels (at 16 m) of the vibratory hammer involved in pile removal are below NMFS current thresholds for Level A takes, i.e., below 180 dB re 1 μ Pa (rms), no exclusion zone would be established, and there would be no required power-down and shutdown measures. In addition, as discussed in the **Federal Register** notice for the proposed IHA, the ambient noise level at the proposed work site is approximately 122 dB re 1 μ Pa. WSF would establish and monitor a zone of influence (ZOI) where the received level falls to this ambient noise level.

One major mitigation measure for WSDOT's proposed pile removal activities at the Mukilteo Tank Farm Pier is ramping up, or soft start, of vibratory pile hammers. The purpose of this procedure is to reduce the startling behavior of marine mammals in the vicinity of the proposed construction activity from sudden loud noise.

Soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times. Each day, WSF will use the soft-start technique at the beginning of pile removal, or if pile removal has ceased for more than one hour.

To ensure that marine mammal takes will not exceed the authorized levels, monitoring for marine mammal presence will take place 30 minutes before, during and 30 minutes after pile driving to ensure that marine mammals takes will not exceed the authorized levels.

If the number of any allotted marine mammal takes (see Estimated Take by Incidental Harassment section below) reaches the limit under the IHA (if issued), WSDOT would implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

Especially, to ensure that the Level B takes of Southern Resident killer whales (SRKW) does not exceed 5% of its population, shutdown measures will be taken when SRKW approach the ZOI during vibratory pile removal. Pile removal will not resume until the SRKW exit the ZOI.

If killer whales approach the ZOI during vibratory pile removal, and it is unknown whether they are SRKW or

transient, it shall be assumed they are SRKW and work will be paused until the whales exit the ZOI.

If a SRKW or an unidentified killer whale enters the ZOI undetected, up to 4 'unintentional' Level B harassment takes will be allowed. Work will be paused until the killer whale exits the ZOI to avoid further Level B harassment take.

Furthermore, the contractor shall regularly check fuel hoses, oil drums, oil or fuel transfers valves, fittings, etc. for leaks, and shall maintain and store materials properly to prevent spills.

Mitigation Conclusions

Based on our evaluation of the prescribed mitigation measures, NMFS has determined the measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

Monitoring Measures

Any ITA issued under Section 101(a)(5)(D) of the MMPA is required to prescribe, where applicable, "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) state that requests for ITAs 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 in the action area.

(1) Marine Mammal Monitoring Coordination

WSF will conduct briefings with the construction supervisors and the crew, and marine mammal observer(s) prior to the start of pier removal to discuss marine mammal monitoring protocol and requirement to halt work.

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research would be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The Northwest Fisheries Science Center of NMFS, the Center for Whale Research, Cascadia Research, the Whale Museum

Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottomfish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSF would be able to get real-time information on the presence or absence of whales before starting any pile removal or driving.

(2) Protected Species Observers (PSOs)

WSDOT will employ qualified PSOs to monitor the 120 dB_{rms} re 1 µPa for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be necessary to correctly identify the target.
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- 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.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or

within the defined ZOI; dates and times when pile removal was paused due to the presence of marine mammals.

(3) Monitoring Protocols

PSOs will be present on site at all times during pile removal. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle would be recorded.

WSF proposes the following methodology to estimate marine mammals that were taken as a result of the proposed Mukilteo Multimodal Tank Farm Pier removal project:

- During vibratory pile removal, two land-based biologists will monitor the area from the best observation points available. If weather conditions prevent adequate land-based observations, boat-based monitoring may be implemented.
- To verify the required monitoring distance, the vibratory Level B behavioral harassment ZOI will be determined by using a range finder or hand-held global positioning system device.
- The vibratory Level B acoustical harassment ZOI will be monitored for the presence of marine mammals 30 minutes before, during, and 30 minutes after any pile removal activity.
- Monitoring will be continuous unless the contractor takes a significant break, in which case, monitoring will be required 30 minutes prior to restarting pile removal.
- If marine mammals are observed, their location within the ZOI, and their reaction (if any) to pile-driving activities will be documented.

NMFS has determined that the monitoring measures described above are adequate, particularly as they relate to assessing the level of taking or impacts to affected species. The land-based PSO is expected to be positioned in a location that will maximize his/her ability to detect marine mammals and will also utilize binoculars to improve detection rates.

Reporting Measures

WSF will provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

If comments are received from the NMFS West Coast Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no

comments are received from NMFS, the draft report will be considered to be the final report.

Notification of Injured or Dead Marine Mammals

In addition to the reporting measures listed above, NMFS will require that WSDOT notify NMFS' Office of Protected Resources and NMFS' Stranding Network of sighting an injured or dead marine mammal in the vicinity of marine operations. Depending on the circumstance of the incident, WSDOT shall take one of the following reporting protocols when an injured or dead marine mammal is discovered in the vicinity of the action area.

(A) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), WSDOT shall immediately cease all operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the incident;
- (ii) description of the incident;
- (iii) status of all sound source use in the 24 hours preceding the incident;
- (iv) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility, and water depth);
- (v) description of marine mammal observations in the 24 hours preceding the incident;
- (vi) species identification or description of the animal(s) involved;
- (vii) the fate of the animal(s); and
- (viii) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(B) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), WSDOT will

immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(C) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

Estimated Take by Incidental Harassment

As mentioned in the **Federal Register** notice for the proposed IHA, a worst-case scenario for Year One pile removal assumes that it may take 516 hours over

90 days in Year One to remove 1,835 piles. The actual number of hours, however, is expected to be less.

Also, as described earlier, for non-impulse noise, NMFS uses 120 dB re 1 μ Pa (rms) as the threshold for Level B behavioral harassment. However, the underwater ambient noise measurements conducted at the proposed project site indicate that the nominal noise level is around 122 dB re 1 μ Pa. Therefore, the distance to the 122 dB (ambient level) contour is used for Level B behavioral harassment. The distance to the 122 dB contour Level B acoustical harassment threshold due to vibratory pile removal extends a maximum of 1.6 km (1 mile), and determines the ZOI. The ZOI would be monitored during pile removal to estimate actual harassment take of marine mammals.

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m (123 ft), and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m (39 ft).

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the project site). The closest documented California sea lion haul out site are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. In-air disturbance will be limited to those animals moving

on the surface through the immediate pier area, within approximately 37 m (123 ft) and 12 m (39 ft) of vibratory pile removal.

Incidental take for each species is estimated by determining the likelihood of a marine mammal being present within a ZOI during active pile removal. Expected marine mammal presence is determined by past observations and general abundance near the Tank Farm Pier during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal. As a result, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and observations from Navy biologists.

Based on the estimates, approximately 1,170 Pacific harbor seals, 540 California sea lions, 180 Steller sea lions, 720 harbor porpoises, 270 Dall's porpoises, 39 killer whales (35 transient, 4 Southern Resident killer whales), 70 gray whales, and 28 humpback whales could be exposed to received sound levels above 122 dB re 1 μ Pa (rms) from the proposed Mukilteo Multimodal Project Tank Farm Pier removal project. A summary of the estimated takes is presented in Table 1.

TABLE 1—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE REMOVAL LEVELS ABOVE 122 dB re 1 μ Pa (rms)

Species	Estimated marine mammal takes	Percentage
Pacific harbor seal	1,170	4.0
California sea lion	540	0.2
Steller sea lion	180	0.3
Harbor porpoise	720	7.0
Dall's porpoise	270	0.6
Killer whale, transient	35	9.8
Killer whale, Southern Resident	4	5.0
Gray whale	70	0.4
Humpback whale	20	1.0

The requested takes represent 4.0% of the Inland Washington stock harbor seals (estimated at 32,000), 0.2% of the U.S. stock California sea lion (estimated at 296,750), 0.3% of the eastern stock Steller sea lion (estimated at 52,847), 7.0% of the Washington Inland Water stock harbor porpoise (estimated at 10,682), 0.6% of the California, Oregon,

and Washington stock Dall's porpoise (estimated at 42,000), 9.8% of the West Coast transient killer whale (estimated at 354), 5.0% of Southern Resident killer whale (estimated at 82), 0.4% of the Eastern North Pacific stock gray whale (estimated at 18,017), and 1.0% of the Eastern North Pacific stock humpback whale (estimated at 2,043).

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This

estimate informs the analysis that NMFS must perform to determine whether the activity will have a “negligible impact” on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be “taken” through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSF’s Mukilteo Tank Farm Pier removal project would conduct vibratory pile removal activities. Elevated underwater noises are expected to be generated as a result of pile removal. However, noise levels from the machinery and activities are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with WSF construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the construction areas, it is estimated that approximately 1,170 Pacific harbor seals, 540 California sea lions, 180 Steller sea lions, 720 harbor porpoises, 270 Dall’s porpoises, 39 killer whales (35 transient, 4 Southern Resident killer whales), 70 gray whales, and 20 humpback whales could be exposed to received noise levels above 122 dB_{rms} re 1 µPa from the proposed construction work at the Mukilteo Multimodal Ferry Terminal. These numbers represent approximately 0.2%–9.8% of the stocks and populations of these species that could be affected by Level B behavioral harassment. These percentages are small relative to the overall size of each species or stock. As mentioned earlier in this document, the worst case scenario for the proposed pile removal work

would only take a total of 516 hours over 90 days.

In addition, these low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Mukilteo Tank Farm Pier removal project is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. The maximum estimated 122 dB isopleths from vibratory pile driving is approximately 1.6 km from the pile before being blocked by landmass.

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the project area. The closest documented California sea lion haul-out sites are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. However, it is estimated that airborne noise from vibratory pile removal would fall below 90 dB and 100 dB re 1 20 µPa at 37 m and 12 m from the pile, respectively. Therefore, pinnipeds hauled out in the vicinity of the project area will not be affected.

For the reasons discussed in this document, NMFS has determined that the vibratory pile removal associated with the Mukilteo Tank Farm Pier Removal Project would result, at worst, in the Level B harassment of small numbers of eight marine mammal species that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the project site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within Washington coastal waters and haul-out sites has led NMFS to determine that this action will have a negligible impact on these species in the vicinity of the proposed project area.

In addition, no take by TTS, Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from WSDOT’s Mukilteo Ferry Terminal construction work. A Finding of No Significant Impact (FONSI) was signed on February 28, 2014. A copy of the EA and FONSI is available upon request (see ADDRESSES).

Endangered Species Act (ESA)

The humpback whale and Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSF’s proposed construction projects. Under section 7 of the ESA, the Federal Transit Administration (FTA) and WSDOT have consulted with NMFS Northwest Regional Office (NWRO) on the proposed WSF Mukilteo Ferry Terminal Multimodal Project. NWRO issued a Biological Opinion on July 31, 2013, which concludes that the proposed Mukilteo Ferry Terminal Multimodal Project may affect, but is not likely to adversely affect the listed marine mammal species and stocks.

The issuance of an IHA to WSF constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. As the effects of the activities on listed marine mammals were analyzed during a formal consultation between the FTA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion and accompanying memo issued to the FTA on July 31, 2013, pertains also to this action. Therefore, NMFS has determined that issuance of an IHA for this activity would not lead to any effects to listed marine mammal species apart from those that were considered in the consultation on FTA’s action.

Authorization

NMFS has issued an IHA to WSDOT for the potential harassment of small numbers of eight marine mammal species incidental to construction work at the Mukilteo Ferry Terminal in Washington State, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 19, 2014.

Donna S. Wieting,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD282

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Construction 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 we have 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 construction activities associated with a wharf construction project in Hood Canal, Washington.

DATES: This authorization is effective from July 16, 2014, through February 15, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: www.nmfs.noaa.gov/pr/permits/incidental.htm. A memorandum describing our adoption of the Navy's Environmental Impact Statement (2011) and our associated Record of Decision, prepared pursuant to the National Environmental Policy Act, are also available at the same site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

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 by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

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." Except with respect to certain activities not pertinent here, section 3(18) of 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; 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." The former is termed Level A harassment and the latter is termed Level B harassment.

Summary of Request

On January 10, 2014, we received a request from the Navy for authorization to take marine mammals incidental to pile driving associated with the construction of an explosives handling wharf (EHW-2) in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). The Navy submitted a revised version of the request on April 11, 2014, which we deemed adequate and complete. The Navy plans to continue this multi-year project, involving impact and vibratory pile driving conducted within the approved in-water work window. This IHA covers only the third year (in-water work window) of the project, from July 16, 2014, through February 15, 2015.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), killer whale (transient only; *Orcinus orca*), and harbor porpoise (*Phocoena phocoena vomerina*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion, which is present only from fall to late spring (approximately late September to early May), and the California sea lion, which is only present from late summer to late spring (approximately late August to early June).

This is the third IHA issued to the Navy for this project. The Navy received IHAs, effective from July 16–February 15, in 2012–13 (77 FR 42279) and 2013–14 (78 FR 43148). Additional IHAs were issued to the Navy in recent years for marine construction projects on the NBKB waterfront. These projects include the Test Pile Project (TPP), conducted in 2011–12 in the proposed footprint of the EHW-2 to collect geotechnical data and test methodology in advance of EHW-2 (76 FR 38361); a two-year maintenance project on the existing explosives handling wharf (EHW-1) conducted in 2011–12 and 2012–13 (76 FR 30130 and 77 FR 43049); and a minor project to install a new mooring for an existing research barge, conducted in 2013–14 (78 FR 43165). In-water work associated with all projects was conducted only during the approved in-water work window (July 16–February 15). Monitoring reports for all of these projects are available on the Internet at