

**FINDING OF NO SIGNIFICANT IMPACT  
FOR THE ISSUANCE OF A RULEMAKING AND SUBSEQUENT LETTERS OF AUTHORIZATION  
TO THE CITY OF SEATTLE'S DEPARTMENT OF TRANSPORTATION  
TO TAKE MARINE MAMMALS BY HARASSMENT  
INCIDENTAL TO THE ELLIOTT BAY SEAWALL PROJECT  
IN SEATTLE, WASHINGTON, SEPTEMBER 2013 TO SEPTEMBER 2019.**

**NATIONAL MARINE FISHERIES SERVICE**

**BACKGROUND**

We (National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) propose to issue regulations governing Letters of Authorization (Authorization) to the City of Seattle's Department of Transportation (SDOT) under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) for the incidental taking of small numbers of marine mammals, incidental to construction associated with the Elliott Bay Seawall Project (Project) in Seattle, Washington, September 2013 to September 2018.

Our proposed action is a direct outcome of SDOT requesting an authorization to take marine mammals, by harassment, incidental to the Project within Elliott Bay, Washington. SDOT's pile driving activities, which have the potential to cause marine mammals to be behaviorally disturbed, warrant an incidental take authorization from us under section 101(a)(5)(A) of the MMPA.

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), we completed an Environmental Assessment (EA) titled, *Issuance of a Rulemaking and Subsequent Letters of Authorization to the City of Seattle's Department of Transportation to Take Marine Mammals by Harassment Incidental to the Elliott Bay Seawall Project in Seattle, Washington, September 2013 to September 2018*. This EA focuses primarily on the environmental effects of authorizing the incidental take of marine mammals incidental to SDOT's activities.

This EA also incorporates by reference the following documents per 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216-6 § 5.09(d):

- SDOT's *Elliott Bay Seawall Project Biological Assessment 2013*, prepared by Tetra Tech, Inc.;
- SDOT's *Elliott Bay Seawall Project Fish, Wildlife, and Vegetation Discipline Report 2013*, prepared by Tetra Tech, Inc.

**4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?**

**Response:** This EA evaluates the affected environment and potential effects of our action (*i.e.*, issuing an Authorization for the take of marine mammals incidental to the Project). We have determined that the proposed pile driving activities may result in some Level B harassment (in the form of short-term and localized changes in behavior) of small numbers, relative to the population sizes, of nine species of marine mammals. The impacts of pile driving activities on marine mammals are specifically related to acoustic activities, and these are expected to be temporary in nature, negligible, and would not result in substantial impact to marine mammals or to their role in the ecosystem.

In addition to the potential incidental harassment of small numbers of marine mammals not listed under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), the Project may have the potential to adversely affect the following species listed as threatened or endangered marine mammals pursuant to the ESA: the Eastern North Pacific southern resident stock of killer whale, humpback whale, and Steller sea lion. The draft 2013 Biological Opinion to be issued under the ESA concludes that the Project is not likely to jeopardize the continued existence of any listed species or adversely modify or destroy critical habitat, and this determination would not be affected by the issuance of the Authorization.

The following mitigation and monitoring measures are planned for the Project to minimize adverse effects to protected marine mammals:

- (1) Limited impact pile driving;
- (2) Containment of impact pile driving;
- (3) Additional attenuation measures;
- (4) Ramp-up of pile driving operations;
- (5) Marine mammal exclusion zones;
- (6) Shutdown and delay procedures;
- (7) Boat-based mitigation monitoring, as necessary;
- (8) Shore-based visual monitoring; and
- (9) Acoustic monitoring.

Taking these measures into consideration, we expect the responses of marine mammals from the preferred alternative to be limited to avoidance of the area around pile driving operations and short-term behavioral changes, falling within the MMPA definition of “Level B harassment.”

We do not anticipate that marine mammal take by injury (Level A harassment), serious injury, or mortality would occur and we expect that harassment takes should be at the lowest level practicable due to the incorporation of the mitigation measures required by the Authorization. For each species, the Level B harassment take numbers are small (most estimates are less than three percent) relative to the regional or overall population size of the marine mammal species or stock.

**5) Are significant social or economic impacts interrelated with natural or physical environmental effects?**

**9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?**

**Response:** The EA and the documents it references analyzed the issuance of an Authorization for the take of marine mammals incidental to the Project and the impacts of pile driving activities in light of other human activities within the study area. We expect the following combination to result in no more than minor and short-term impacts to marine mammals in the project area in terms of overall disturbance effects: (a) our issuance of an Authorization with prescribed mitigation and monitoring measures for the Project; (b) past, present, and reasonably foreseeable development projects in Elliott Bay; (c) vessel traffic and vessel noise; and (d) fishing.

These activities, when conducted separately or in combination with other activities, have the potential to affect marine mammals in the study area. Any cumulative effects caused by the addition of the Project's impacts on marine mammals would be extremely limited and would not rise to the level of "significant," especially considering the timeframe of the proposed activities, the location of the proposed Project in an already industrial area, and the mitigation and monitoring requirements in the Authorization.

**10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?**

**Response:** We have determined that the proposed action is not an undertaking with the potential to affect historic resources. The issuance of an Authorization for the take of marine mammals incidental to the conduct of the Project would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources.

**11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?**

**Response:** We have determined that the proposed action (*i.e.*, issuing an Authorization for the take of marine mammals incidental to the Project) is not an undertaking with the potential to introduce or spread non-indigenous species. Local vessels would be used to assist in construction activities.

**12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?**

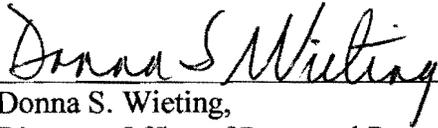
**Response:** Our action of issuing an Authorization for the take of marine mammals incidental to the Project would not set a precedent for future actions with significant effects nor represent a decision in principle.

Each MMPA authorization applied for under section 101(a)(5) must contain information identified in our implementing regulations. We consider each activity specified in an application separately and, if we issue an Authorization, we must determine that the impacts

**DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting EA titled, *Issuance of a Rulemaking and Subsequent Letters of Authorization to the City of Seattle's Department of Transportation to Take Marine Mammals by Harassment Incidental to the Elliott Bay Seawall Project in Seattle, Washington, September 2013 to September 2018*, and documents that it references, we have determined that issuance of regulations and Letters of Authorization to SDOT in accordance with Alternative 1 the EA would not significantly impact the quality of the human environment, as described in this FONSI and in the EA.

In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.



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

**JUL 25 2013**

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Date