



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

OCT 26 2011

Michele Zukerberg
State of Washington
Department of Natural Resources
1111 Washington Street SE
Olympia, WA 98504-7014

Dear Ms. Zukerberg,

Enclosed is an Incidental Harassment Authorization (IHA) issued to the Washington State Department of Natural Resources, under the authority of Section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.). This Authorization allows for the incidental take, by Level B harassment only, of harbor seals (*Phoca vitulina*), incidental to the Woodard Bay Natural Resource Conservation area piling and structure removal project. The IHA is valid from November 1, 2011 through February 28, 2012.

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 activity and submit a final report to the National Marine Fisheries Service's (NMFS) Office of Protected Resources, within 90 days after completion of the work authorized herein. Along with other mitigation measures to be incorporated, the IHA requires monitoring for the presence and behavior of marine mammals.

If you have any questions concerning the IHA or its requirements, please contact Ben Laws, Office of Protected Resources, NMFS at 301-427-8425.

Sincerely,


James H. Lecky, Director
Office of Protected Resources

Enclosure





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

Department Of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

INCIDENTAL HARASSMENT AUTHORIZATION

The Washington State Department of Natural Resources (DNR), 1111 Washington St SE, Olympia, WA 98504-7014, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371) to harass marine mammals incidental to piling and structure removal in Woodard Bay Natural Resources Conservation Area, Washington.

1. This Incidental Harassment Authorization (IHA) is valid from November 1, 2011, through February 28, 2012.
2. This Authorization is valid only for piling and structure removal associated with the DNR's habitat restoration project in the Woodard Bay Natural Resource Conservation area.
3. General Conditions
 - (a) A copy of this Authorization must be in the possession of the DNR, its designees, and personnel operating under the authority of this IHA.
 - (b) This Authorization allows the incidental taking, by Level B harassment only, of 2,080 harbor seals (*Phoca vitulina*).
 - (c) The taking by injury, serious injury, or death of any of the species listed in item 3(b) of the Authorization or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.
 - (d) The DNR shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and DNR staff prior to the start of activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.
 - (e) The DNR shall comply with applicable equipment noise standards of the U.S. Environmental Protection Agency and ensure that all construction equipment has noise control devices no less effective than those provided on the original equipment.



- (f) In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, the holder of this Authorization must immediately cease operations and report the incident, within 48 hours, to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, phone (301) 427-8401.
 - i. In such case, DNR shall postpone operations until NMFS is able to review the incident and determine whether steps can be taken to avoid further injury or mortality or until such taking can be authorized under regulations promulgated under section 101(a)(5)(A) of the MMPA.

4. Cooperation

The holder of this Authorization is required to cooperate with NMFS and any other federal, state, or local agency authorized to monitor the impacts of the activity on marine mammals.

5. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

- (a) No pile or structure removal shall occur outside of the effective dates of this Authorization;
- (b) The DNR shall approach the action area with caution to alert seals to their presence from a distance and shall begin conducting the specified activity at the farthest location practicable from harbor seal haul-out areas;
- (c) The contractor or protected species observer (PSO) shall survey the operational area for seals before initiating activities and wait until the seals are at a sufficient distance (i.e., 50 ft (15 m)) from the activity so as to minimize the risk of direct injury from the equipment or from piling or structure breaking free;
- (d) The DNR shall require the contractor to initiate a vibratory hammer soft start at the beginning of each work day; and
- (e) The vibratory hammer power pack shall be outfitted with a muffler to reduce in-air noise levels to no higher than 80 dB re: 20 μ Pa.

The soft start method shall include a reduced energy vibration from the hammer for the first 15 seconds and then a one minute waiting period. This method shall be repeated twice before commencing with regular energy operations.

6. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during restoration activity as described below:

- (a) The DNR shall employ at least one PSO at each harbor seal haul-out, for a minimum of 15 total work days, including the following times:
 - i. During the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer;
 - ii. During 5 days when activities are occurring nearest to the haul-out area(s); and
 - iii. During at least 5 additional days, to be decided when the schedule of work is provided by the contractor.

The 5 days described under 6(a)iii shall be days of heightened activity levels, or days that are otherwise anticipated to be more likely to result in disturbance of harbor seals (should such days exist), or otherwise shall be selected to be days that are representative of typical levels of activity.

- (b) The PSO shall begin monitoring 30 minutes prior to crew arrival, during the entirety of the monitoring day's restoration activities; and 30 minutes after crew leave the site (or until darkness, whichever is sooner); and
- (c) The PSO shall keep a low profile and engage in minimal movement during monitoring as to not disturb the seals.

7. Reporting

The holder of this Authorization is required to:

- (a) Submit a draft report to NMFS within 45 days of the completion of marine mammal monitoring. A final report shall be prepared and submitted to NMFS within thirty days following receipt of comments on the draft report from NMFS. This report must contain the following information, at minimum:
 - i. The number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day;
 - ii. The number of seals that flush from the haul-out or, for animals already in the water, that display behavioral reactions;
 - iii. Seal behavior before, during and after disturbance;
 - iv. The proximity of seals to the disturbance source upon onset of behavioral changes;

- v. Monitoring dates, times and conditions;
 - vi. Dates and description of all restoration activities;
 - vii. After correcting for observation effort, the number of seals taken over the duration of the habitat restoration project; and
 - viii. Detailed observational notes regarding sightings of individuals of any species other than harbor seals.
8. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Waudall

James H. Lecky
Director, Office of Protected Resources
National Marine Fisheries Service

26 October 2011

Date