



## Incidental Harassment Authorization

Washington State Department of Transportation (WSDOT) Ferries Division (WSF), 2901 3<sup>rd</sup> Avenue, Suite 500, Seattle, Washington 98121-3014, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107 to take, by Level B harassment only, small numbers of marine mammals incidental to conducting in-water construction work at Orcas Island and Friday Harbor ferry terminals, contingent upon the following conditions:

1. This Authorization is valid from September 1, 2013, through August 31, 2014.
2. This Authorization is valid only for activities associated in-water construction work at Orcas Island and Friday Harbor ferry terminals in the State of Washington.
3. (a) The species authorized for incidental harassment takings, Level B harassment only, are: Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*).
  - (b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:
    - (i) Vibratory pile removal; and
    - (ii) Vibratory pile driving.
  - (c) The taking of any marine mammal in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the Northwest Regional Administrator (206-526-4489), National Marine Fisheries Service (NMFS) and the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at (301) 427-8401.
4. The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, at least 48 hours prior to the start of activities identified in 3(b) (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).



## 5. Prohibitions

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 1 (attached). The taking by Level A harassment or death of the species identified in Table 1 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.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

## 6. Mitigation

### (a) Ramp Up (Soft Start):

Vibratory hammer for pile removal and pile driving shall be initiated at reduced power for 15 seconds with a 1 minute interval, and be repeated with this procedure for an additional two times.

### (b) Marine Mammal Monitoring:

Monitoring for marine mammal presence shall take place 30 minutes before, during and 30 minutes after pile driving to document marine mammal occurrence and responses associated with the construction activities.

### (c) Power Down and Shutdown Measures:

If the number of any allotted southern resident killer whale takes reaches the limit under the IHA (if issued), WSDOT shall implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

### (d) Restart after Shutdown

After a delay, power down, or shutdown triggered by 6(c), WSDOT shall not resume activities until the killer whale (1) is observed to have left the Level B harassment zone or (2) has not been seen or otherwise detected within the Level B harassment zone 30 minutes.

## 7. Monitoring:

(a) Protected Species Observers: WSDOT shall employ qualified protected species observers (PSOs) to monitor the 120 dB re 1  $\mu$ Pa (rms) zone of influence (ZOI) for marine mammals. Qualifications for marine mammal observers include:

- (i) 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 may be necessary to correctly identify the target.
- (ii) Advanced education in biological science, wildlife management, mammalogy or related fields (bachelors degree or higher is preferred), but not required.
- (iii) Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- (iv) Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- (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.
- (vi) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- (vii) 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.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

- (i) A range finder or hand-held global positioning system device will be used by PSOs to ensure that the 120 dB re 1  $\mu$ Pa (rms) Level B behavioral harassment ZOI is monitored.
- (ii) A 30-minute pre-construction marine mammal monitoring period will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring period will be required after the last pile driving or pile removal of the day. If the constructors personnel take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.
- (iii) If marine mammals are observed, the following information will be documented:

- (A) Species of observed marine mammals;
  - (B) Number of observed marine mammal individuals;
  - (C) Behavioral of observed marine mammals;
  - (D) Location within the ZOI; and
  - (E) Animals' reaction (if any) to pile-driving activities
- (iv) During vibratory pile removal and driving, one land-based biologist will monitor the area from the terminal work site, and one boat with a qualified PSO shall navigate the ZOI in a circular path.
- (v) PSOs shall use binoculars to monitor the exclusion zone and ZOI.
- (vi) WSDOT shall contact the Orca Network and/or Center for Whale Research to find out the location of the nearest marine mammal sightings.

#### 8. Reporting:

- (a) WSF shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.
- (b) If comments are received from the NMFS Northwest Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report shall 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.
- (c) 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 Northwest 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.

(d) 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 Northwest 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.

(e) 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 Northwest 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.

9. 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, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

10. A copy of this Authorization and the Incidental Take Statement issued under the Endangered Species Act must be in the possession of each contractor who performs the construction work at Orcas Island and Friday Harbor ferry terminals.

11. WSDOT is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS' Biological Opinion.



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Helen Golde, Acting Director  
Office of Protected Resources  
National Marine Fisheries Service

**APR 18 2013**

Date

**Table 1. Species/stocks and numbers of marine mammals allowed under this IHA.**

<b>Species</b>	<b>Orcas Island Ferry Terminal</b>	<b>Friday Harbor Ferry Terminal</b>	<b>Total</b>
Pacific harbor seal	150	200	350
California sea lion	25	50	75
Northern elephant seal	15	30	45
Steller sea lion	25	50	75
Harbor porpoise	50	100	150
Dall's porpoise	15	30	45
Pacific white-sided dolphin	15	30	45
Killer whale, transient	24	24	48
Killer whale, Southern Resident	8	8	16
Gray whale	4	4	8
Humpback whale	4	4	8
Minke whale	10	10	20