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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC172

Taking of Marine Mammals Incidental to Specified Activities; Construction at Bremerton Ferry Terminal

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 six species of marine mammals incidental to vibratory pile driving and pile removal activities at the Bremerton Ferry Terminal in Washington State between September 2013 and August 2014.

DATES: Effective September 1, 2013, through August 31, 2014.

ADDRESSES: Requests for information on the incidental take authorization should be addressed to P. Michael Payne, Chief, 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 14, 2012, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of six marine mammal species incidental to construction associated with the replacement of wingwalls at the Bremerton Ferry Terminal in Washington State. On December 4, 2012, WSDOT submitted a revised IHA application. The action discussed in this document is based on WSDOT's December 4, 2012, IHA application.

Description of the Specified Activity

Detailed description of the WSDOT's wingwalls replacement work at the Bremerton Ferry Terminal is provided in the Federal Register notice for the proposed IHA (78 FR 11844; February 20, 2013). Since that time, no changes have been made to the wingwalls replacement project at the Bremerton Ferry Terminal, except that WSDOT requested the incidental take coverage to be extended from February 28, 2014, through August 31, 2014, in case the project may be postponed. Nevertheless, the amount of activity and the duration of actual in-water construction has not changed. The potential

change in work season will not affect marine mammal take estimates since the actual construction duration will not change and the initial calculation relied on marine mammal presence in the project area on annual basis.

The details of WSDOT's wingwalls replacement work at Bremerton Ferry Terminal are provided in the Federal Register notice for the proposed IHA (78 FR 11844; February 20, 2013). 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 February 20, 2013 (78 FR 11844). 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, but has asked NMFS to condition the IHA in certain respects. Specific comments and responses are provided below.

Comment 1: The Commission requests that NMFS justify its conclusion that the taking will involve only a small number of southern resident killer whales (SRKWs) and work with the Fish and Wildlife Service and the Commission to develop a policy that sets forth the criteria and/or thresholds for determining what constitutes "small numbers" and "negligible impact" for the purpose of authorizing incidental takes of marine mammals

Response: As stated in the Federal Register for the proposed IHA, WSDOT is required to implement shutdown measures if the combined Level B takes of SRKWs

reach to a total of 16 at the Bremerton Ferry Terminal, which is equivalent to approximately 19% of the SRKW population. Subsequently, NMFS worked with WSDOT on a possible solution to further reduce takes of SRKWs. WSDOT agreed that it will take all practical steps to avoid exposing SRKWs to sound levels that may result in harassment by implementing shutdown measures whenever a SRKW is sighted in the vicinity of the project area. In the event a SRKW is not detected before entering the zone of influence, NMFS has authorized the take of no more than four SRKW , which represents 5% of the existing population. As we have done in the past, NMFS will continue to collaborate with the Commission and Fish and Wildlife Service on a variety of MMPA issues, including small numbers and negligible impact, to strengthen our collective understanding of how activities affect marine mammal species and stocks.

Comment 2: The Commission requests NMFS require WSDOT to monitor the Level B harassment zone at least 30 minutes before, during, and 30 minutes after the pile-removal and -driving activities to ensure that those activities are not having an unintended effect on marine mammals in or near the zone.

Response: NMFS agrees with the Commission and will require the WSDOT to monitor the Level B harassment zone for 30 minutes before, during, and 30 minutes after the pile driving and pile removal activities.

Comment 3: The Commission requests NMFS specify in its authorization that, after a delay, power down, or shutdown, the Ferries Division would not resume activities until the marine mammal (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 for 15

minutes for small odontocetes and 30 minutes for mysticetes and large odontocetes, including killer whales.

Response: As described in detail in the Federal Register notice for the proposed IHA, WSDOT's wingwalls replacement project at the Bremerton Ferry Terminal will only use vibratory pile hammer for pile driving. Marine mammals are not expected to be injured (Level A harassment) by WSDOT's use of vibratory pile hammers, thereby obviating the need for an exclusion zone for this activity. Nevertheless, for initiation of pile driving and pile removal activities, WSDOT is required to monitor the Level B harassment zone for 30 minutes before, during, and 30 minutes after in-water construction, and to ramp up vibratory hammer for pile removal and pile driving, which will effectively reduce any startle behavior of marine mammals in the vicinity at the commencement of the piling activity.

However, WSDOT is required to shutdown when a SRKW is sighted in the vicinity of the project area, or the potential takes of any SRKW is approaching the allotted take limit. Therefore, under such circumstances, NMFS will require that WSDOT not resume activities until the killer whale under the above condition (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 after a shutdown.

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), killer whale (Orcinus

orca), gray whale (Eschrichtius robustus), and humpback whale (Megaptera novaeangliae).

General information on the marine mammal species found in California 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 driving and pile removal associated with the construction activities at the Bremerton Ferry Terminal 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 wingwalls replacement work at the Bremerton Ferry Terminal, 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 10 and 16 m) of the vibratory hammer involved in pile removal and pile driving are below NMFS' current thresholds for Level A takes, i.e., below 180 dB (rms) re 1 μPa, no exclusion zone will be established, and there will be no required shutdown measures except when take of SRKWs approaches the authorized limit (see below). Instead, WSDOT is required to establish and monitor the 120 dB (rms) re 1 μPa zone of influence (ZOI, see below Monitoring and Reporting section).

One significant mitigation measure for WSDOT's pile removal and pile driving activities is ramping up, or soft start, of vibratory pile hammers. The purpose of this

procedure is to prevent the startling behavior of marine mammals in the vicinity of the construction activity from sudden loud noise.

Soft start requires contractors to initiate the vibratory hammer at reduced power for 15 seconds with a 1 minute interval, and repeat such procedures for an additional two times.

In addition, monitoring for marine mammal presence will take place 30 minutes before, during and 30 minutes after pile driving to document marine mammal occurrence and responses before, during and after the pile driving and pile removal activities (see Monitoring and Reporting section below).

In addition, WSDOT will implement shutdown measures whenever Southern Resident killer whales (SRKWs) are present in the vicinity of the project area and take all practical steps to avoid exposing SRKWs to sound levels that result in harassment. If it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW appropriate mitigation measures shall be implemented.

Further, if the number of any allotted marine mammal takes reaches the limit under the IHA, WSDOT will implement shutdown measures if such species/stock of animal approaches the 120 dB Level B harassment zone.

Finally, to avoid exceeding its SRKW take limit, NMFS has required WSDOT to not resume activities until any SRKW (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.

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) Protected Species Observers (PSOs)

WSDOT will employ qualified protected species observers (PSOs) to monitor the 120 dB re 1 μPa (rms) 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 is necessary to correctly identify the target.

- Advanced education (at least some college level courses) in biological science, wildlife management, mammalogy or related fields (Bachelor's degree or higher is preferred), but not required.
- 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.

(2) Monitoring Protocols

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

The following protocols will be used for marine mammal monitoring during the Bremerton Ferry Terminal construction work:

- A range finder or hand-held global positioning system device will be used to ensure that the 120 dB re 1 μPa (rms) Level B behavioral harassment ZOI is monitored.
- A 20-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 construction 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.
- If marine mammals are observed, the following information will be document:
  - Species of observed marine mammals;
  - Number of observed marine mammal individuals;
  - Behavioral of observed marine mammals;
  - Location within the ZOI; and
  - Animals' reaction (if any) to pile-driving activities.
- 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. All PSOs shall use binoculars to conducting monitoring.

- In addition, WSDOT will contact the Orca Network and/or Center for Whale Research to determine the location of the nearest marine mammal sightings. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: the Northwest Fisheries Science Center of NOAA Fisheries, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline, and the British Columbia Sightings Network.
- Marine mammal occurrence information collected by the Orca Network also includes detection by the following hydrophone systems: (1) The SeaSound Remote Sensing Network, a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study killer whale communication, underwater noise, bottomfish ecology, and local climatic conditions, and (2) A hydrophone at the Port Townsend Marine Science Center that measures average underwater sound levels and automatically detects unusual sounds.

NMFS has determined that these monitoring measures are adequate, particularly as it relates 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 be required to utilize binoculars to improve detection rates. In addition, the boat-based PSO will cruise within the 120 dB ZOI, which is not a particularly large zone, thereby allowing him/her to conduct additional monitoring with binoculars. With respect to prevent takes of SRKW, NMFS considers WSDOT's visual and acoustic monitoring is adequate because (1) killer whales have large dorsal fins and

can be easily spotted from great distances; (2) SRKWs typically move in groups which makes visual detection much easier; and (3) resident killer whales are very vocal, which makes them relatively easier for acoustic detection.

Reporting Measures

WSDOT will provide NMFS with a draft monitoring report within 90 days of the conclusion of the 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 Northwest 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 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.

(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 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.

(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 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.

Estimated Take by Incidental Harassment

As mentioned in the Federal Register notice for the proposed IHA, a worst-case scenario for the Bremerton Ferry Terminal project assumes that it may take four days to remove the existing piles and seven days to install the new piles. The maximum total number of hours of pile removal activity is about 28 hours, and pile-driving activity is about 6.75 hours (averaging about 3.2 hours of active pile removal/driving for each construction day).

Also, as described in the Federal Register notice for the proposed IHA, for non-impulse noise, NMFS uses 120 dB (rms) re 1 μPa as the threshold for Level B behavioral

harassment. The distance to the 120 dB contour Level B acoustical harassment threshold due to vibratory pile driving for the Bremerton ferry terminal project extends a maximum of 4.7 km (2.9 miles) before land is intersected. The ZOI would be monitored during construction 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, and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m.

The nearest known harbor seal haulout site to the Bremerton ferry terminal is 8.5 km north and west (shoreline distance). The nearest documented California and Steller sea lion haulout sites to the Bremerton ferry terminal are navigation buoys in Rich Passage, approximately 9 and 10 km east of the terminal. The Puget Sound Naval Shipyard security barrier California sea lion haulout is located approximately 435 m SW of the ferry terminal.

In-air noise from this project will not reach any haulout sites, but harbor seals swimming on the surface through the 37 m zone, and other pinnipeds swimming on the surface through the 12 m zone during vibratory pile removal or driving may be temporarily disturbed.

Incidental take is estimated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal or driving. Expected marine mammal presence is determined by past observations and general abundance near the Bremerton Ferry Terminal 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 649 Pacific harbor seals, 1,584 California sea lions, 66 Steller sea lions, 28 killer whales (24 transient, 4 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received sound levels at or above 120 dB re 1 µPa (rms) from the proposed Bremerton Ferry Terminal wingwalls replacement work. A summary of the estimated takes is presented in Table 3.

Table 3. Estimated numbers of marine mammals that may be exposed to received pile driving and pile removal levels above 120 dB re 1 µPa (rms)

Species	Estimated marine mammal takes	Percentage
Pacific harbor seal	649	4.4%
California sea lion	1,584	0.53%
Steller sea lion	66	0.11%
Killer whale, transient	24	6.8%
Killer whale, Southern Resident	4	5%
Gray whale	8	0.03%
Humpback whale	8	0.7%

The requested takes represent 4.4% of the Inland Washington stock harbor seals (estimated at 14,612), 0.53% of the U.S. stock California sea lion (estimated at 296,750), 0.11% of the eastern stock Steller sea lion (estimated at 58,334), 6.8% of the West Coast transient killer whale (estimated at 354), 5% of Southern Resident killer whale (estimated at 85), 0.03% of the Eastern North Pacific stock gray whale (estimated at 26,000), and 0.7% of the Eastern North Pacific stock humpback whale (estimated at 1,100), all of which are small relative to their population or stock size.

Negligible Impact and Small Numbers Analyses and Determinations

As a preliminary matter, we typically include our negligible impact and small numbers analyses and determinations under the same section heading of our Federal Register Notices. Despite co-locating these terms, we acknowledge that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and we have applied the relevant factors to inform our negligible impact and small numbers determinations.

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 WSDOT's proposed Bremerton Ferry Terminal construction project would conduct vibratory pile removal and pile driving to replace wingwall structures. Elevated underwater noises are expected to be generated as a result of pile removal and pile driving activities. 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 WSDOT construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the proposed construction areas, it is estimated that approximately 649 Pacific harbor seals, 1,584 California sea lions, 66 Steller sea lions, 40 killer whales (24 transient, 16 Southern Resident killer whales), 8 gray whales, and 8 humpback whales could be exposed to received noise levels above 120 dB_{rms} re 1 μPa from the proposed construction work at the Bremerton Ferry Terminal. These numbers represent approximately 0.03% - 6.8% of the stocks and populations of these species could be affected by Level B behavioral harassment. As mentioned earlier in this document, the worst case scenario for the proposed construction work would only take a total of 34.75 hours (28 hours for pile removal and 6.75 hours for pile driving).

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. In addition, no important feeding and/or reproductive areas of marine mammals is known to be near the proposed action area. Therefore, the take resulting from the

proposed Bremerton Ferry Terminal construction projects 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 120 dB isopleths from vibratory pile driving is approximately 4.7 km from the pile before being blocked by landmass.

The closest documented California sea lion haulout site to the Bremerton Ferry Terminal is the Puget Sound Naval Shipyard security barrier, located approximately 435 m SW of the ferry terminal. The next closest documented California sea lion haulout sites to the Bremerton Ferry Terminal are navigation buoys and net pens in Rich Passage, approximately nine and ten km east of the terminal, respectively. However, it is estimated that airborne noise from vibratory pile driving a 30-in steel pile would fall below 90 dB and 100 dB re 1 20 µPa at 37 m and 12 m from the pile, respectively. No other pinniped haulout site exists in the vicinity of the proposed project area. Therefore, pinnipeds hauled out at the Puget Sound Naval Shipyard security barrier will not be affected.

For the reasons discussed in this document, NMFS has determined that the impact of vibratory pile removal and pile driving associated with wingwall replacements at Bremerton Ferry Terminal would result, at worst, in the Level B harassment of small numbers of six marine mammals that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the construction 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 construction area.

In addition, no take by TTS, Level A harassment 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 wingwalls replacement work at the Bremerton Ferry Terminal. A Finding of No Significant Impact (FONSI) was signed on June 10, 2013. A copy of the EA and FONSI is available upon request (see ADDRESSES).

Endangered Species Act (ESA)

The humpback whale, Southern Resident stock of killer whale, and the eastern population of Steller sea lions, are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSDOT's construction projects. NMFS' Permits and Conservation Division consulted with NMFS' Northwest Regional Office Division of Protected Resources under section 7 of the ESA on the issuance of an IHA to WSDOT under section 101(a)(5)(D) of the MMPA for this activity. A Biological Opinion was issued on February 19, 2013, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

Authorization

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

Dated: June 12, 2013.

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

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