3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD741

Taking of Marine Mammals Incidental to Specified Activities; Anacortes Tie-up Slips Dolphin and Wingwall Replacement

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 11 species of marine mammals incidental to construction activities for a tie-up slips dolphin and wingwall replacement project in Anacortes, Washington State, between September 1, 2015, and August 31, 2016.

DATES: Effective September 1, 2015, through August 31, 2016.

ADDRESSES: Requests for information on the incidental take authorization should be addressed to Jolie Harrison, 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/*. 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 April 1, 2014, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of 11 marine mammal species incidental to construction associated with the Anacortes Tie-up Slips Dolphin and Wingwall Replacement in the city of Anacortes, on Fidalgo Island, adjacent to Guemes Channel, Skagit County, Washington, between September 1, 2015, and February 15, 2016. NMFS determined that the IHA application was complete on July 1, 2014.

Description of the Specified Activity

A detailed description of the WSDOT's Anacortes tie-up slips dolphin and wingwall project is provided in the **Federal Register** notice for the proposed IHA (80 FR 11648; March 4, 2015). Since that time, no changes have been made to the proposed construction activities. 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 March 4, 2015. 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). Specific comments and responses are provided below.

Comment 1: The Commission notes that the construction would be conducted in December and January, however, WSDOT's ambient noise measurements were conducted in March and showed that median ambient noise level at the proposed construction area is 123 dB re 1 µPa. The Commission states that the ambient noise levels would be lower in winter (December and January) than those were collected in March when vessel traffic is greater. Therefore, the Commission recommends that NMFS either (1) require WSDOT to measure ambient sound levels during winter and adjust the Level B harassment zones accordingly or (2) base the Level B harassment zones on the 120-dB re 1 µPa threshold and adjust the zones to ensure adequate protection for southern resident killer whales.

Response: NMFS worked with WSDOT and its acoustic consultant regarding the ambient noise levels in the vicinity of the construction area. In general, doubling the number of boats would only increase the background sound levels by about 3 decibels so adding or subtracting one boat will not have a substantial effect on the overall background sound levels. The ferry vessels dominate the sound levels in the areas around the terminals where WSDOT's measurement was collected. It is only expected a

slight increase in sound levels in the summer months due to more recreational boats in the area. Both NMFS and WSDOT's acoustic consultant considers that sound levels between about September to May should be consistent from month to month and representative of the work period.

Nevertheless, WSDOT agreed that modeled 120 dB isopleths to be used as the threshold for Level B takes for vibratory pile driving and pile removal activities and submitted a updated monitoring plan to encompass this larger zone of influence (ZOI). The updated monitoring measures are discussed in details below in the "**Mitigation Measure**" and "**Monitoring and Reporting**" sections.

In addition, WSDOT is considering getting new winter background data prior to the start of the project. If the measurement shows smaller ZOI, WSDOT will inform NMFS with another revised monitoring plan that reflects the updated ZOI based on onsite measurements.

The revised ZOI does not change the number of marine mammals takes, because all animals within the general vicinity of the project are being considered for potential takes.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the proposed construction area include Pacific harbor seal (*Phoca vitulina richardsi*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*) (transient and Southern Resident stocks), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), harbor

porpoise (*Phocoena phocoena*), Dall's porpoise (*P. dali*), and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*). A list of the species and their status are provided in Table 1.

Table 1. Marine Mammal Species Potentially Present in Region of Activity

Species	ESA Status	MMPA Status	Occurrence
Harbor Seal	Not listed	Non-depleted	Frequent
California Sea Lion	Not listed	Non-depleted	Frequent
Northern Elephant Seal	Not listed	Non-depleted	Occasional
Steller Sea Lion (eastern DPS)	Not listed	Under review	Rare
Harbor Porpoise	Not listed	Non-depleted	Frequent
Dall's Porpoise	Not listed	Non-depleted	Occasional
Pacific White-sided dolphin	Not listed	Non-depleted	Occasional
Killer Whale	Endangered (S. Resident)	Depleted	Occasional
Gray Whale	Delisted	Unclassified	Occasional
Humpback Whale	Endangered	Depleted	Rare
Minke Whale	Not listed	Non-depleted	Rare

General information on the marine mammal species found in Washington coastal waters can be found in Caretta *et al.* (2014), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/pdf/po2013.pdf*. Refer to that document for information on these species. A list of marine mammals in the vicinity of the action and their status are provided in Table 3. Specific information concerning these species in the vicinity of the proposed action area is provided in detail in the WSDOT's IHA application.

Potential Effects of the Specified Activity on Marine Mammals

The effects of underwater noise from in-water pile removal and pile driving associated with the construction activities for a tie-up slips dolphin and wingwall replacement project in Anacortes 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.

Mitigation Measures

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth 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 proposed Anacortes tie-up slips dolphin and wingwall replacement project, 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.

No Impact Pile Driving

To avoid potential injury to marine mammals, only vibratory pile hammer will be used for pile removal and pile driving.

Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between September 1, 2015, and February 15, 2016.

Establishment of Level B Harassment Zones of Influence

Because WSDOT will not use impact pile driving for the proposed construction work, no Level A exclusion zone exists for marine mammals. NMFS currently uses received level of 120 dB as the onset of Level B harassment from non-impulse sources such as vibratory pile driving and pile removal. Although ambient measurement during March at the vicinity of Anacortes Ferry Terminal showed that the median ambient noise level is at 123 dB re 1 µPa, WSDOT will use 120 dB re 1 µPa as the isopleths for modeling its Level B harassment zone. WSDOT is considering collecting ambient noise data before in-water construction and adjust the Level B behavioral harassment zone based on measurements.

The 120-dB Level B harassment ZOIs from in-water vibratory pile removal and pile driving are modeled based on in-water measurements at the WSDOT Port Townsend Ferry Terminal (Laughlin 2011) and Friday Harbor Ferry Terminal (Laughlin 2010) constructions. These modeled results are presented in Table 2 below.

Table 2. Modeled ZOI distances to Level B behavioral harassment from the pile driving and pile removal at WSDOT's Anacortes project area

Vibratory Pile Type/Method	Threshold	In-water ZOI (km)	In-air ZOI (m)
12-inch timber removal	120 dB_{RMS} re 1 µPa	2.3	----------

24-inch steel removal/driving	120 dB_{RMS} re 1 µPa	6.3	----------
30-inch steel driving	120 dB_{RMS} re 1 µPa	39.8	----------
36-inch steel driving	120 dB_{RMS} re 1 µPa	63.1	----------
All piles/in-air (harbor seals)	90 dB_{RMS} re 20 µPa	----------	30
All piles/in-air (other pinnipeds)	100 dB_{RMS} re 20 µPa	----------	10

Soft Start

WSDOT will implement "soft start" (or ramp up) to reduce potential startling behavioral responses from marine mammals. Soft start requires contractors to initiate noise from the vibratory hammer for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times. Each day, WSDOT will use the soft-start technique at the beginning of pile driving, or if pile driving has ceased for more than one hour.

Shutdown Measures

WSDOT shall implement shutdown measures if southern resident killer whales are sighted within the vicinity of the project area and are approaching the Level B harassment zone (zone of influence, or ZOI) during in-water construction activities.

If a killer whale approaches the ZOI during pile driving or removal, and it is unknown whether it is a Southern Resident killer whale or a transient killer whale, it shall be assumed to be a Southern Resident killer whale and WSDOT shall implement the shutdown measure.

If a Southern Resident killer whale or an unidentified killer whale enters the ZOI undetected, in-water pile driving or pile removal shall be suspended until the whale exits the ZOI to avoid further level B harassment.

Further, WSDOT shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA (if issued), if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Coordination with Local Marine Mammal Research Network

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research will 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 NOAA Fisheries, 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, bottom fish 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, WSDOT will be able to get real-time information on the presence or absence of whales before starting any pile driving.

Mitigation Conclusions

NMFS has carefully evaluated the mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving and pile removal or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving and pile removal, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

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

In order to issue an incidental take authorization (ITA) for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at

50 CFR 216.104 (a)(13) indicate 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 proposed action area. WSDOT submitted a marine mammal monitoring plan as part of the IHA application, and updated the plan based on comments received from the Commission. The updated monitoring plan can be found at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels of pile driving that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

WSDOT shall employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Anacortes tie-up dolphins and wingwall replacement project. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. If a PSO observes a marine mammal within a ZOI that appears to be disturbed by the work activity, the PSO will notify the work crew to initiate shutdown measures.

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (e.g., Zeiss, 10 x 42 power). Due to the different sizes of ZOIs from different pile sizes, two different ZOIs and monitoring protocols corresponding to a specific pile size will be established. Specifically, during vibratory

timber removal, and 24" steel vibratory pile driving and removal, one land-based PSO will monitor the area from the terminal work site, and one boat with a driver and a PSO will travel through the monitoring area. During 30/36" vibratory pile driving, one land-based PSO will monitor the area from the terminal work site, and two boats with two drivers and two PSOs will travel through the monitoring area (see Figures 2 and 3 in WSDOT's updated Marine Mammal Monitoring Plan).

Data collection during marine mammal monitoring will consist of a count of all marine mammals by species, a description of behavior (if possible), location, direction of movement, type of construction that is occurring, time that pile replacement work begins and ends, any acoustic or visual disturbance, and time of the observation. Environmental conditions such as weather, visibility, temperature, tide level, current, and sea state would also be recorded.

Reporting Measures

WSDOT is required to submit a final monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. 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. NMFS shall have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT shall address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS requires WSDOT to notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of the construction site. WSDOT shall provide NMFS

with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the vicinity of the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, 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 [Level A harassment]; 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 [Level B harassment].

As discussed above, in-water pile removal and pile driving (vibratory and impact) generate loud noises that could potentially harass marine mammals in the vicinity of WSDOT's proposed Anacortes Ferry Terminal tie-up slip dolphin and wingwall replacement project.

As mentioned earlier in this document, currently NMFS uses 120 dB re 1 µPa and 160 dB re 1 µPa at the received levels for the onset of Level B harassment from non-impulse (vibratory pile driving and removal) and impulse sources (impact pile driving) underwater, respectively. Table 3 summarizes the current NMFS marine mammal take criteria.

Table 3. Current Acoustic Exposure Criteria for Non-explosive Sound Underwater

Criterion	Criterion Definition	Threshold

Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS)	180 dB re 1 µPa (cetaceans) 190 dB re 1 µPa (pinnipeds) root mean square (rms)
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 µPa (rms)
Level B Harassment	Behavioral Disruption (for non-impulse noise)	120 dB re 1 µPa (rms)

As explained above, ZOIs will be established that encompass the areas where received underwater sound pressure levels (SPLs) exceed the applicable thresholds for Level B harassment. In the case of WSDOT's proposed Anacortes construction project, the Level B harassment ZOI for non-impulse noise sources will be at the received level at 120 dB. This level may be revised and the Level B ZOI reestablished if WSDOT conduct an ambient noise measurement during the time of construction. There will not be a zone for Level A harassment in this case, because source levels from vibratory hammer do not exceed the threshold for Level A harassment, and no impact hammer will be used in the proposed project.

Sound Levels from Proposed Construction Activity

As mentioned earlier, the revised 120-dB Level B harassment ZOIs are modeled based on in-water measurements at the WSDOT Port Townsend Ferry Terminal (Laughlin 2011) and Friday Harbor Ferry Terminal (Laughlin 2010) constructions (Table 2). Incidental take is calculated for each species by estimating the likelihood of a marine mammal being present within a ZOI during active pile removal/driving. Expected marine mammal presence is determined by past observations and general abundance near the Anacortes ferry terminal during the construction window. Ideally, 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, and information from state and federal agencies. All haulout and observation data available are summarized in Section 3 of WSDOT's IHA application. Project duration is presented in Section 2 of WSDOT's IHA application.

The calculation for marine mammal exposures is estimated by:

Exposure estimate = N (number of animals in the area) * Number of days of pile removal/driving activity

Estimates include Level B acoustical harassment during vibratory pile removal and driving. All estimates are conservative, as pile removal/driving will not be continuous during the work day. Using this approach, a summary of estimated takes of marine mammals incidental to WSDOT's Anacortes Ferry Terminal tip-up dolphins and wingwall replacement work are provided in Table 4.

Table 4. Estimated numbers of marine mammals that may be exposed to received pile removal levels above 120 dB re 1 µPa (rms)

Species	Estimated marine mammal takes	Abundance	Percentage
Pacific harbor seal	900	14,612	6.0%
California sea lion	180	296,750	0.06%
Steller sea lion	360	52,847	0.7%
Northern elephant seal	72	124,000	0.06%
Harbor porpoise	612	10,682	5.7%
Dall's porpoise	108	42,000	0.3%
Killer whale, transient	70	354	20%
Killer whale, Southern Resident	4	81	5.0%
Pacific white-sided dolphin	360	25,233	1.4%
Gray whale	36	18,017	0.2%
Humpback whale	30	2,043	1.5%
Minke whale	10	202 - 600	1.7 - 5%

Analysis and Determinations

Negligible Impact

Negligible impact is "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" (50 CFR 216.103). 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 must consider 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 harassment takes, the number of estimated mortalities, and effects on habitat.

WSDOT's Anacortes Ferry Terminal tie-up dolphins and wingwall replacement project would involve vibratory pile removal and pile driving activities. Elevated underwater noises are expected to be generated as a result of these activities; however, these noises are expected to result in no mortality or Level A harassment and limited Level B harassment of marine mammals. WSDOT will not use impact hammer for pile driving, thus eliminating the potential for injury (including PTS) and TTS from noise impact. For vibratory pile removal and pile driving, noise levels are not expected to reach the level that may cause TTS, injury (including PTS), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment (including injury or PTS) or Level B harassment in the form of TTS from

being exposed to in-water pile removal and pile driving associated with WSDOT's construction project.

Additionally, the sum of noise from WSDOT's proposed Anacortes Ferry Terminal tie-up dolphins and wingwall replacement construction activities is confined to a limited area by surrounding landmasses; therefore, the noise generated is not expected to contribute to increased ocean ambient noise. In addition, due to shallow water depths in the project area, underwater sound propagation of low-frequency sound (which is the major noise source from pile driving) is expected to be poor.

In addition, WSDOT's proposed activities are localized and of short duration. The entire project area is limited to WSDOT's Anacortes Ferry Terminal construction work. The entire project would involve the removal of 272 existing piles and installation of 81 piles. The duration for the construction would involve 68 hours in 9 days for pile removal and 27 hours in 27 days for pile installation. 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. Moreover, the proposed mitigation and monitoring measures are expected to reduce potential exposures and behavioral modifications even further. 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 Anacortes Ferry Terminal tie-up dolphins and wingwall replacement work 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 project area is not a prime habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic noise associated with WSDOT's construction activities are expected to affect only a small number of marine mammals on an infrequent and limited basis.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the "Anticipated Effects on Marine Mammal Habitat" section. The project activities would not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from WSDOT's Anacortes Ferry Terminal tie-up dolphins and wingwall replacement project will have a negligible impact on the affected marine mammal species or stocks.

Small Number

Based on analyses provided above, it is estimated that approximately 900 harbor seals, 180 California sea lions, 360 Steller sea lions, 72 northern elephant seals, 612 harbor porpoises, 108 Dall's porpoises, 70 transient killer whales, 4 Southern Resident

killer whales, 360 Pacific white-sided dolphins, 36 gray whales, 30 humpback whales, and 10 minke whales could be exposed to received noise levels that could cause Level B behavioral harassment from the proposed construction work at the Anacortes Ferry Terminal in Washington State. These numbers represent approximately 0.06% to 20% of the populations of these species that could be affected by Level B behavioral harassment, respectively (see Table 5 above), which are small percentages relative to the total populations of the affected species or stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, which are expected to reduce the number of marine mammals potentially affected by the proposed action, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no subsistence uses of marine mammals in the proposed project area; and, thus, no subsistence uses impacted by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

The humpback whale and the Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSDOT's proposed construction projects. Under section 7 of the ESA, the Federal Highway Administration (FHWA) and WSDOT have consulted with NMFS West Coast

Regional Office (WCRO) on the proposed WSDOT Anacortes Ferry Terminal tie-up slip dolphins and wingwall replacement project. WCRO issued a Biological Opinion on July 15, 2014, which concludes that the proposed Anacortes Ferry Terminal tie-up slip dolphins and wingwall replacement project may affect, but is not likely to adversely affect the listed marine mammal species and stocks.

The issuance of an IHA to WSDOT 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 FHWA 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 FHWA on July 15, 2014, 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 FHWA's action.

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 Anacortes Ferry Terminal tie-up slip dolphins and wingwall replacement project. A Finding of No Significant Impact (FONSI) was signed in May 2015. A copy of the EA and FONSI is available upon request (see **ADDRESSES**).

Authorization

NMFS has issued an IHA to WSDOT for the potential harassment of small numbers of 11 marine mammal species incidental to the Anacortes Ferry Terminal tie-up

slip dolphins and wingwall replacement construction in Washington State, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 12, 2015.

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