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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD644

Taking of Marine Mammals Incidental to Specified Activities; Vashon Seismic Retrofit Project

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 nine species of marine mammals incidental to construction activities for Vashon Seismic Retrofit Project in Vashon Island, Washington, between August 1, 2015, and July 31, 2016.

DATES: Effective August 1, 2015, through July 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 June 20, 2014, WSDOT submitted a request to NOAA requesting an IHA for the possible harassment of small numbers of nine marine mammal species incidental to construction associated with the Vashon Seismic Retrofit Project at the Vashon Ferry Terminal in Vashon Island, Washington between August 1, 2015, and February 15, 2016. On December 15, 2014, WSDOT added a test pile drive and removal program to the Vashon Seismic Retrofit Project and submitted a revised IHA application. The information provided here is based on WSDOT's December 15, 2014, IHA application.

Description of the Specified Activity

A detailed description of the WSDOT's Vashon Seismic Retrofit Project is provided in the **Federal Register** notice for the proposed IHA (79 FR 78821; December 31, 2014). Since that time, no changes have been made to the proposed construction activities at the Vashon Seismic Retrofit Project. 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 December 31, 2014. 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, subject to inclusion of the proposed mitigation and monitoring measures described in the proposed IHA. NMFS agrees with the Commission's recommendation and issued the IHA with mitigation and monitoring measures described below.

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*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), minke whale (*Balaenoptera acutorostrata*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in the vicinity of the project area in Washington 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*. 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 pile removal and pile driving associated with the Vashon Seismic Retrofit Project 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 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 Vashon Seismic Retrofit 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.

Use of Noise Attenuation Devices

Noise attenuation systems (i.e., bubble curtains) will be used during all impact pile driving of steel piles to dampen the acoustic pressure and reduce the impact on marine mammals. By reducing underwater sound pressure levels at the source, bubble curtains would reduce the area over which Level B harassment would occur, thereby potentially reducing the numbers of marine mammals affected. In addition, the bubble curtain system would reduce sound levels below the threshold for injury (Level A harassment) and thus eliminate the need for an exclusion zone for Level A harassment.

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 August 1, 2015, and February 15, 2016.

Establishment of Exclusion Zone and Level B Harassment Zones of Influence

Before the commencement of in-water pile driving activities, WSDOT shall establish Level B behavioral harassment ZOIs where received underwater sound pressure levels (SPLs) are higher than 160 dB (rms) and 120 dB (rms) re 1 µPa for impulse noise sources (impact pile driving) and non-impulses noise sources (vibratory pile driving and mechanic dismantling), respectively.

For the test pile program, because glacial till soils will be harder to drive through, the assumed attenuation will be 8-10 dB, the same bubble-curtain attenuation used in the

current consultation. Based on the 2009 Vashon Test Pile, source levels for impact driving of 30" piles are 210 dB (peak), 181 dB (SEL), and 189 dB (rms) measured at 16 m (Pile P-8 Unmitigated) (WSDOT 2010).

The exclusion zones for Level A harassment and ZOIs for Level B harassment are modeled based on in-water measurements during the WSF Bainbridge Island Ferry Terminal and presented in Table 1 below.

Table 1. Modeled maximum Level A and Level B harassment zones for various pile driving activities

Pile Driving Methods	Distance to 190 dB* (m)	Distance to 180 dB (m)	Distance to 160 dB (m)	Distance to 121** dB (m)	ZOI number	ZOI size (km^2)
Vibratory pile driving / removal (24-in steel pile)	NA	NA	NA	5,500	ZOI-1	44 km^2
Vibratory pile driving / removal (13-in timber pile)	NA	NA	NA	2,000	ZOI-2	5.6 km^2
Vibratory pile removal (30-in steel pile)	NA	NA	NA	21,500	ZOI-3	151 km^2
Test impact pile driving (assume 8 dB reduction w/ attenuation devices)	4.0	19	402	NA	ZOI-4	0.4 km^2
Impact driving (24-in steel pile)	3.0	12	251	NA	ZOI-5	0.07 km^2
Impact pile driving (13-in timber)	NA	NA	46	NA	ZOI-6	1,769 m^2

* SPLs are dB re 1 µPa rms.
**Since the median ambient noise level at the Project area is 121 dB re 1 µPa (rms), this level will be used as the threshold for vibratory pile driving and removal.

Soft Start

A "soft-start" technique is intended to allow marine mammals to vacate the area before the pile driver reaches full power. Whenever there has been downtime of 30 minutes or more without pile driving, the contractor will initiate the driving with ramp-up procedures described below.

Soft start for vibratory hammers requires contractors to initiate hammer noise for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will

be repeated two additional times. Soft start for impact hammers requires contractors to provide an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three-strike sets. Each day, WSDOT will use the soft-start technique at the beginning of pile driving or removal, or if pile driving or removal has ceased for more than one hour.

Shutdown Measures

WSDOT shall implement shutdown measures if a marine mammal is sighted approaching the Level A exclusion zone. In-water construction activities shall be suspended until the marine mammal is sighted moving away from the exclusion zone, or if the animal is not sighted for 30 minutes after the shutdown.

In addition, 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 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.

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.

WSDOT shall employee NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Vashon Seismic Retrofit 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 driving/removal methods and pile sizes, ZOIs corresponding to a specific pile driving/removal methods listed in Table 1 will be monitored according to the following monitoring protocols at different locations.

- The required monitoring distances will be determined by using a range finder or hand-held global positioning system device.
- ZOI-1 will be monitored by one land-based biologist at the terminal work site, and one boat with a pilot and a biologist that will travel through the monitoring area.
- ZOI-2 will be monitored by one land-based biologist at the terminal work site, and one boat with a pilot and a biologist that will travel through the monitoring area.
- ZOI-3 will be monitored by five land-based biologists, and one boat with a pilot and a biologist that will travel through the monitoring area.
- ZOI-4 will be monitored by one land-based biologist at the terminal work site, and one boat with a pilot and a biologist that will travel through the monitoring area.
- ZOI-5 will be monitored by one land-based biologist at the terminal work site, and one boat with a pilot and a biologist that will travel through the monitoring area.
- ZOI-6 will be monitored by two land-based biologists from the terminal work site.

The geographic location of each ZOI is provided in maps of WSDOT's marine mammal monitoring plan.

WSDOT will contact the Orca Network and/or Center for Whale Research to find out the location of the nearest marine mammal sightings. In addition, WSDOT will utilize marine mammal occurrence information collected by the Orca Network using hydrophone systems to maximize marine mammal detection in the project vicinity.

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.

NMFS has determined that the monitoring measures described above are adequate, particularly as they relate to assessing the level of taking or impacts to affected species. The land-based PSOs are expected to be positioned in a location that will maximize their abilities to detect marine mammals and will also utilize binoculars to improve detection rates.

Reporting Measures

WSF will provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work, or within 90 days after the expiration of this IHA, whichever comes first. 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 West Coast 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 Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast 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 Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast 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 Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast 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 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 Vashon Seismic Retrofit Project.

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 2 summarizes the current NMFS marine mammal take criteria.

Table 2. 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 exceed the applicable thresholds for Level B harassment. There will not be a zone for Level A harassment in this case, because the bubble curtain system will keep all underwater noise below the threshold for Level A harassment.

Sound Levels from Proposed Construction Activity

As mentioned earlier, the project includes impact driving and proofing of 24-inch hollow steel piling, impact driving of 13-inch timber piling, and impact driving of 30-inch steel test piles.

Based on in-water measurements during the WSF Bainbridge Island Ferry Terminal, impact pile driving of a 24-inch steel pile generated 170 dB RMS (overall average), with the highest measured at 189 dB RMS measured at 10 meters (Laughlin 2005). A bubble curtain will be used to attenuate steel pile impact driving noise.

For the test pile program, the more conservative cetacean injury zone (19 m/62 ft) will be used to set the 30-inch steel test pile exclusion zone.

In-water measurements for impact driving of 13-inch timber piling are not available. Impact driving of 12-inch timber piling generated 170 dB RMS (WSF 2014). The source level for 13-inch timber piles shall be assumed to be the same as 12-inch timber piles. A bubble curtain will not be used during impact driving of timber piles.

Using practical spreading model to calculate sound propagation loss, Table 2 provides the estimated maximum distances for a variety of harassment zones.

As explained above, exclusion zones and ZOIs will be established that encompass the areas where received underwater SPLs exceed the applicable thresholds for Level A and Level B harassment, respectively.

Incidental take for each species is estimated by determining the likelihood of a marine mammal being present within a ZOI during pile removal and pile driving. Expected marine mammal presence is determined by past observations and general abundance near the Vashon 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 mammals. 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 1,919 Pacific harbor seals, 1,919 California sea lions, 644 Steller sea lions, 438 harbor porpoises, 146 Dall's porpoises, 54 killer whales (50 transient, 4 Southern Resident killer whales), 71 gray whales, 36 humpback whales, and 36 minke whales could be exposed to received sound levels that could result in takes from the proposed Vashon Seismic Retrofit Project. 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 removal levels above 121 dB re 1 µPa (rms)

Species	Estimated marine mammal takes	Abundance	Percentage
Pacific harbor seal	1,919	14,612	13%
California sea lion	1,919	296,750	0.7%
Steller sea lion	644	63,160	1.0%
Harbor porpoise	438	10,682	4.0%
Dall's porpoise*	146	42,000	0.3%
Killer whale, transient	50	521	9.6%
Killer whale, Southern Resident	4	85	4.7%
Gray whale	71	19,126	0.4%
Humpback whale	36	1,918	1.9%
Minke whale	36	478	7.5%

* The **Federal Register** notice for the proposed IHA erroneously stated that the estimated takes for Dall's porpoise to be 136 individuals. It is corrected in this document as 146 individuals. The results of the analysis and the percentage of the take by its population remain the same.

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 Vashon Seismic Retrofit Project would involve 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, if any, Level B harassment of marine mammals. WSDOT would use noise attenuation devices (i.e., bubble curtains) during the impact pile driving of steel piles, thus eliminating the potential for injury (including PTS) and TTS from impact driving. For vibratory pile removal and pile driving and impact pile driving of timber piles, 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.

In addition, WSDOT's activities are localized and of short duration. The entire project area is limited to WSDOT's Vashon ferry terminal in Vashon Island. The entire project would involve the removal of 106 existing timber piles and installation of 119 steel piles. In addition, 96 temporary piles will be installed and then removed during the project. The duration for pile driving and removal lasts for about 10 to 120 minutes per pile, depending on the type and dimension of the pile. 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 Vashon Seismic Retrofit Project 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 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 Vashon Seismic Retrofit 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 1,919 harbor seals, 1,919 California sea lions, 644 Steller sea lions, 438 harbor porpoises, 136 Dall's porpoises, 50 transient killer whales, 4 Southern Resident killer whales, 71 gray whales, 36 humpback whales, and 36 minke whales could be exposed to received noise levels that could cause Level B behavioral harassment from the proposed construction work at the Vashon ferry terminal in Washington State. These numbers represent approximately 0.3% to 14% of the populations of these species that could be affected by Level B behavioral harassment, respectively (see Table 2 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 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 Vashon Seismic Retrofit Project. Under section 7 of the ESA, the Federal Transit Administration (FTA) and WSDOT have consulted with NMFS West Coast Regional Office (WCRO) on the proposed WSDOT Vashon Seismic Retrofit Project. WCRO issued a Biological Opinion in May 2015, which concludes that the proposed Vashon Seismic Retrofit 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 FTA 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 FTA in May 2015, 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 FTA'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 Vashon Seismic Retrofit 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 nine marine mammal species incidental to the Vashon Seismic Retrofit Project in Washington State, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 2, 2015.

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

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