



# MARINE MAMMAL COMMISSION

24 February 2016

Ms. Jolie Harrison, Chief  
Permits and Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the Washington State Department of Transportation Ferries Division (WSDOT) seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to upgrading the Coupeville Ferry Terminal on Whidbey Island, Washington. The incidental harassment authorization would be valid for one year. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 21 January 2016 notice (81 Fed. Reg. 3378) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

WSDOT plans to upgrade the transfer span towers at the Coupeville Ferry Terminal. Operators would remove up to seven 12-in creosote timber piles using a vibratory hammer, clamshell bucket, and/or direct pull. They also would install up to six temporary and eight permanent 24-in steel piles using an impact hammer and remove those six temporary piles using a vibratory hammer once the tower upgrades are completed. WSDOT expects activities to take eight days, weather permitting. It would limit activities to daylight hours only during the timeframe from 1 July 2016 to 15 February 2017.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of 10 marine mammal species or stocks<sup>1</sup>. NMFS anticipates that any impact on the affected species and stocks would be negligible. NMFS also does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures include—

- using only one hammer at a given time;

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<sup>1</sup> The Commission understands that NMFS has re-estimated the number of takes per species or stock by taking a consistent approach and standardizing the take calculation method based on the maximum number of animals observed in the project area x number of project days, except for transient killer whales given the required shutdown procedures for killer whales.

- ceasing pile-driving and -removal activities if any marine mammal comes within 10 m of the equipment;
- using two to seven qualified protected species observers (land- and/or vessel-based) to monitor the Level A and B harassment zones<sup>2</sup> for 30 minutes before, during, and for 30 minutes after the proposed activities;
- using standard soft-start, delay, and shut-down procedures;
- using delay and shut-down procedures, if a species for which authorization has not been granted (including Southern Resident killer whales<sup>3</sup> and humpback whales) or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone;
- obtaining both marine mammal (1) sightings data from the Orca Network and/or Center for Whale Research and (2) acoustic detection data from the Orca Network on a daily basis;
- reporting injured and dead marine mammals to NMFS and the local stranding network using NMFS's phased approach and suspending activities, if appropriate; and
- submitting a final report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.  
Executive Director

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<sup>2</sup> The Commission understands that NMFS will be using 187 rather than 185 dB re 1  $\mu$ Pa at 10 m as the source level for impact pile driving of the 24-in piles and that the Level A and B harassment zones would be adjusted accordingly.

<sup>3</sup> Including shutting down when killer whales are observed and their stock is unknown.