



# MARINE MAMMAL COMMISSION

18 August 2017

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 Seattle Department of Transportation (SDOT) 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 restoration of Piers 62 and 63 in Seattle, Washington. This is a two-year project, but the incidental harassment authorization would be valid for one year. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 25 July 2017 notice (82 Fed. Reg. 34486) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

SDOT plans to replace Pier 62 and modify Pier 63 in Seattle. Operators will install up to 189 30-in steel pipe piles and remove up to 880 timber piles. Piles would be installed using a vibratory and/or impact hammer and removed using a vibratory hammer or clamshell bucket. Up to two hammers could be used at any given time. SDOT expects activities to take 113 days, weather permitting. It would limit activities to daylight hours only, during the timeframe from 1 September 2017 to 28 February 2018.

NMFS preliminarily has determined that, at most, the proposed activities could cause Level A and/or B harassment of small numbers of 12 marine mammal species or stocks but 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 a sound attenuation device (e.g., bubble curtain) during impact pile driving;
- conducting in-situ measurements during two days each of impact pile driving, vibratory pile driving, and vibratory pile removal and adjusting the Level A and B harassment zones accordingly<sup>1</sup>;

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<sup>1</sup> Ambient sound would be measured as well.

- ceasing pile-driving and -removal activities if any marine mammal comes within 10 m of the equipment;
- using four<sup>2</sup> qualified protected species observers (land- and vessel-based) to monitor the Level A and B harassment zones 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 or if a species for which authorization has been granted but the authorized takes have been met, approaches or is observed within the Level B harassment zone;
- obtaining both marine mammal (1) sightings data from the Orca Network, Center for Whale Research, and/or Washington Department of Transportation (WSDOT) and (2) acoustic detection data from the Orca Network on a daily basis during both pile driving and removal<sup>3</sup>;
- reporting injured and dead marine mammals to NMFS and the West Coast Regional Stranding Coordinator using NMFS's phased approach and suspending activities, if appropriate; and
- submitting a final report.

### **Rounding of take estimates**

The Commission agrees with NMFS's determinations, but again is concerned about the rounding of take estimates. The method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. As the Commission has indicated in previous letters regarding this matter<sup>4</sup>, the issue at hand involves policy rather than mathematical accuracy. The numbers of takes for Level A harassment were based on the respective cumulative sound exposure level thresholds summed across up to 53 days. The Commission notes that, although NMFS developed criteria associated with rounding that it had planned to share with the Commission a few months ago, it has yet to do so. Therefore, the Commission recommends that NMFS share the rounding criteria with the Commission such that this matter can be resolved in the near future.

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<sup>2</sup> In the Commission's review of the *Federal Register* notice, it noted that the size of the Level B harassment zone for vibratory pile driving was large and couldn't adequately be monitored by only three observers. SDOT has agreed to add an additional observer stationed on the ferry. NMFS plans to require SDOT to have four observers monitoring for marine mammals in the final authorization.

<sup>3</sup> The Commission requested that the original measures be supplemented and clarified for consistency with measures used by WSDOT. NMFS indicated that these measures would be included in the final authorization.

<sup>4</sup> See the Commission's [29 November 2016 letter](#) detailing this issue.

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

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R" and a distinct "Lent" at the end.

Rebecca J. Lent, Ph.D.,  
Executive Director