



MARINE MAMMAL COMMISSION

21 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 Washington State Department of Transportation (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 bridge repair in Aberdeen, Washington. This is an ongoing multi-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) 10 August 2017 notice (82 Fed. Reg. 37426) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

WSDOT plans to repair an area of scour associated with Pier 14 of the US 101 Chehalis River Bridge. Operators will install and remove up to 44 steel sheet piles and 6 steel H-piles using a vibratory hammer. WSDOT expects activities to occur on up to 12 days, weather permitting. It would limit activities to daylight hours only, during the timeframe from 16 July to 30 September 2018.

NMFS preliminarily has determined that, at most, the proposed activities could cause Level B harassment of small numbers of five marine mammal species 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—

- ceasing pile-driving and -removal activities if any marine mammal comes within 10 m of the equipment¹;
- using three to four qualified land-based protected species observers to monitor the Level A and B harassment zones for 30 minutes before, during, and for 30 minutes after the proposed activities;
- using standard² delay and shut-down procedures;

¹ NMFS indicated it incorrectly omitted these standard mitigation measures from the *Federal Register* notice but would include them in the final authorization.

- using delay and shut-down procedures, if a species for which authorization has not been granted¹ 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;
- 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.

Mitigation measures

NMFS proposed to require WSDOT to implement delay or shut-down procedures if a marine mammal approaches or enters the exclusion zones, which range from 10 to 55 m³. In another recent proposed incidental harassment authorization for the City and Borough of Sitka (CBS), NMFS indicated that there was no potential for Level A harassment because a marine mammal is not expected to remain at such close distances (0.3 to 48.4 m) for long periods of time during vibratory pile driving or removal (82 Fed. Reg. 34641). In that instance, the pile driving and removal would occur from 1 to 5 hours per day, which is nearly identical to the 3 to 5 hours per day proposed by WSDOT. NMFS stated that CBS would not be required to shut down during any activities involving a vibratory hammer unless an animal comes within 10 m⁴ (82 Fed. Reg. 34641). The Commission is unsure why NMFS did not use the same rationale for WSDOT's proposed activities or why action proponents that plan to conduct similar activities are not required to abide by consistent measures.

The Commission also noted multiple missing or inconsistent mitigation measures in NMFS's proposed authorization for WSDOT. As the Commission has discussed with NMFS in recent years, NMFS should include standard mitigation, monitoring, and reporting measures in a consistent manner for all authorizations involving pile driving and removal. Therefore, the Commission recommends that NMFS (1) determine whether action proponents would be required to implement delay or shut-down procedures for vibratory pile driving and removal and (2) include standard mitigation, monitoring, and reporting measures consistently for all authorizations involving those activities.

Rounding of take estimates

As the Commission indicated in previous letters regarding this matter⁵, the method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days⁶, does not account for and negates the intent of NMFS's

² NMFS informed the Commission that it incorrectly indicated in the *Federal Register* notice that the 30-minute clearance time would apply to all species of marine mammals. NMFS would include the standard 15-minute clearance time for small cetaceans and pinnipeds and 30-minute clearance time for medium-sized and large cetaceans in the final authorization.

³ Based on Level A harassment zones calculated to be 0.1 to 54.6 m.

⁴ Which is intended to prevent non-auditory, physical injury.

⁵ See the Commission's [29 November 2016 letter](#) detailing this issue.

⁶ The Commission notes that WSDOT in its application did calculate a daily take estimate (determined by multiplying the estimated density by the daily ensonified area) and then rounded that to a whole number *before* multiplying it by the number of days that the various activities would occur.

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24-hour reset policy. The issue at hand involves policy rather than mathematical accuracy. 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 again recommends that NMFS share the rounding criteria with the Commission such that this matter can be resolved in the near future.

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

Sincerely,



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