



# MARINE MAMMAL COMMISSION

20 January 2015

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 to take small numbers of marine mammals by harassment. The taking would be incidental to retrofitting structures at the Vashon ferry terminal in Puget Sound, Washington, during a one-year period. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 31 December 2014 notice (79 Fed. Reg. 78821) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. As discussed in previous Commission letters regarding WSDOT applications and the proposed taking of southern resident killer whales, NMFS has yet to develop a clear policy setting forth more explicit criteria and/or thresholds for making small numbers and negligible impact determinations. The Commission understands that NMFS is in the process of developing clearer policies and guidance to address this issue and welcomes the opportunity to work with NMFS as it develops these policies.

WSDOT plans to replace and retrofit various structures at the Vashon ferry terminal to ensure safe and reliable function of the terminal if a significant earthquake would occur. During the project, operators would remove 67 13-in timber piles and 39 30-in concrete-jacketed timber piles using a vibratory hammer. They would install 119 24-in steel piles using a vibratory and/or impact hammer. The operators also would install and then remove up to 44 13-in temporary timber piles and 52 24-in temporary steel piles. In addition, they would conduct a test pile program in which one double walled, one Mandrel, and one control steel pile would be installed with an impact hammer and removed with a vibratory hammer to test the drivability of those piles in a hard substrate and to determine sound attenuation. WSDOT expects pile removal and installation to take up to 150 days (weather permitting) between 1 August 2015 and 15 February 2016.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of nine marine mammal species or stocks. 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 a sound attenuation device (i.e., bubble curtain) during impact pile driving;
- conducting activities during daylight hours only;
- using no more than one vibratory hammer at any given time to remove/install piles;
- using ramp-up, delay, and shut-down procedures;
- using delay and shut-down procedures if (1) a killer whale approaches the Level B harassment zone or (2) the number of marine mammal takes for any species or stock reaches the limit authorized for that species or stock under the incidental harassment authorization and an animal from that species or stock approaches the Level B harassment zone;
- using at least two and up to six<sup>1</sup> protected species observers (land- and/or vessel-based observers in the nearfield and farfield) to monitor the Level A and B harassment zones 30 minutes prior to, during, and 30 minutes after pile driving and removal;
- obtaining marine mammal sightings data from the Orca Network and/or Center for Whale Research and marine mammal acoustic detection data from the Orca Network to supplement its monitoring efforts;
- reporting injured and dead marine mammals to NMFS and local stranding network using the NMFS's phased approach and suspending activities, if appropriate; and
- submitting weekly reports and a final report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the requested 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>1</sup> Depending on the size of the Level B harassment zone.