



MARINE MAMMAL COMMISSION

10 August 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 (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to replacement of the Mukilteo Multimodal Ferry Terminal in Mukilteo, Washington. The incidental harassment authorization would be valid for one year. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 23 July 2015 notice (80 Fed. Reg. 43720) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

WSDOT plans to replace the Mukilteo Ferry Terminal east of its existing location at the site of the former U.S. Department of Defense Fuel Supply Point facility, known as the Tank Farm property. The project initially was expected to take up to four years to complete, with the first incidental harassment authorization issued last year¹. WSDOT indicated it would apply for additional incidental harassment authorizations in future years as well. During this year of the project, operators would remove approximately 3,900 12-in creosote timber piles using a vibratory hammer, clamshell bucket, and/or direct pull. WSDOT expects pile removal to take 140 days, weather permitting. It would limit activities to daylight hours only during the timeframe from 1 August 2015 to 15 February 2016 and 1 to 31 August 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 only one vibratory hammer at a given time;

¹ The project was delayed for a year, and activities have yet to occur.

- ceasing pile-removal activities if any marine mammal comes within 10 m of the equipment;
- using two NMFS-approved protected species observers (one in the near-field and one in the far-field) to monitor the Level B harassment zone 30 minutes prior to, during, and 30 minutes after vibratory pile removal;
- using ramp-up procedures;
- using delay and shut-down procedures if a killer whale approaches or is observed within the Level B harassment zone;
- using delay and shut-down procedures if 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;
- obtaining marine mammal sightings data from the Orca Network and/or Center for Whale Research on a daily basis and, if a southern resident killer whale is sighted, on a real-time basis;
- obtaining marine mammal acoustic detection data from the Orca Network on a daily basis to supplement its monitoring efforts;
- 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.

Adequate time for incorporation of public comments before issuance of an authorization

During the past few years, NMFS has at times included a much abbreviated timeframe under which it considers public comments prior to issuing authorizations. The deadline for comments on the proposed incidental harassment authorization is 24 August 2015. However, NMFS has indicated in the proposed incidental harassment authorization that the effective date would be 1 September 2015. The Commission is concerned that the time between the close of the comment period and the proposed issuance date (6 business days) does not provide adequate opportunity for NMFS to consider, provide responses to, and incorporate any changes prompted by comments from the Commission and the public. This is especially disconcerting since WSDOT submitted its application to NMFS on 6 November 2014—a timeframe the Commission believes is quite sufficient for application submittal and authorization issuance. To ensure effective compliance with the public review process provided for under the MMPA, the Commission recommends that NMFS allow sufficient time between the close of the comment period and the issuance of an incidental harassment authorization for NMFS to analyze, consider, and respond fully to comments received and incorporate recommended changes, as appropriate.

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

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large, sweeping initial "R".

Rebecca J. Lent, Ph.D.
Executive Director