



INCIDENTAL HARASSMENT AUTHORIZATION

The Washington Department of Transportation (WSDOT) and its designees are hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to incidentally harass marine mammals, under the following conditions:

1. This incidental harassment authorization (IHA) is valid for one year from the date of issuance.
2. This IHA authorizes take incidental to impact and vibratory pile driving and removal, as specified in the WSDOT's IHA application, associated with Seattle Slip 3 Vehicle Transfer Span Replacement Project in Seattle, Washington. Hereafter (unless otherwise specified) the term "pile driving" is used to refer to both pile installation and pile removal.
3. General Conditions
 - (a) A copy of this IHA must be in the possession of the Holder of the Authorization (Holder), supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this IHA at all times that activities subject to this IHA are being conducted.
 - (b) The species and/or stocks authorized for taking are listed in Table 1. Authorized take, by Level B harassment only, is limited to the species and numbers listed in Table 1.
 - (c) The taking by Level A harassment, serious injury or death of any of the species listed in Table 1 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of this IHA.
 - (d) The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant WSDOT staff are trained prior to the start of activities subject



to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

4. Mitigation Requirements

- (a) The Holder must employ PSOs and establish monitoring locations as described in section 5 of this IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.
- (b) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (i.e., pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity.
- (c) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 2 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.
- (d) If a marine mammal is observed entering or within the shutdown zones indicated in Table 2, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in condition 4(e) of this IHA.
- (e) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 2 or 15 minutes have passed without re-detection of the animal.
- (f) The Holder must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

- (g) The Holder must use a bubble curtain during impact pile driving. The bubble curtain must be operated as necessary to achieve optimal performance. At a minimum, the Holder must adhere to the following performance standards:
 - (i) The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column.
 - (ii) The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact.
 - (iii) Air flow to the bubblers must be balanced around the circumference of the pile.
- (h) Pile driving activity must be halted (as described in condition 4(d) of this IHA) upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone (as shown in Table 2).
- (i) The Holder, construction supervisors and crews, PSOs, and relevant WSDOT staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- (j) Prior to the start of pile driving activities each day, and hourly after pile driving has begun, the Holder must contact the Orca Network to obtain the latest sightings information for southern resident killer whales (SRKW) and humpback whales (HW).
 - (i) WSDOT must delay or halt pile driving activities if SRKWs or HWs are sighted within the vicinity of the project area and are approaching the Level B harassment zones (Table 2) during in-water activities.

- (ii) If a killer whale approaches the Level B harassment zone during pile driving activities, and stock is unknown or unidentified (*i.e.*, SRKW or transient killer whale), it must be assumed to be a SRKW and WSDOT must delay or halt pile driving activities as described in 4(j)(ii) of this IHA.
- (iii) If a SRKW, unidentified killer whale or HW enters the Level B harassment zone undetected, in-water pile driving must be suspended immediately upon detection and must not resume until the animal exits the Level B harassment zone or 15 minutes have passed without re-detection of the animal.

5. Monitoring Requirements

- (a) Marine mammal monitoring must be conducted in accordance with the conditions in this section and the Monitoring Plan (attached) and this IHA.
- (b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:
 - (i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.
 - (ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
 - (iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
 - (iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

- (v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.
- (c) The Holder must establish the following monitoring locations as described in the Monitoring Plan (attached):
 - (i) For the vibratory removal of 14-in steel H-Piles, two PSOs must be assigned to monitor the area from the construction site and one PSO must monitor the area from Pier 69/70.
 - (ii) For the vibratory installation and removal of 24, 30, and 78-in steel pipe piles eight PSOs will monitor shutdown zones. Two PSOs must be stationed at the construction site as described above, with one PSO stationed on each of the Seattle-Bainbridge Island Ferries (two PSOs in total on ferries), one PSO stationed at Alki Beach Pier on the south end of Elliott Bay, one PSO stationed at Magnolia Viewpoint on the north end of Elliott Bay, one PSO station at Rolling Bay on Bainbridge Island, and another PSO stationed at Rockaway Beach on Bainbridge Island. If 1 of the Seattle-Bainbridge Island Ferries is delayed or inoperable during pile installation described above, then WSDOT must place the second ferry PSO at Creosote Bench Park on Bainbridge Island as an alternate monitoring location.
 - (iii) For impact installation of 24-in steel pipe piles, two PSOs must be stationed at the construction site and an additional PSO must be stationed at Pier 62 in Seattle on the north end of the SRKW and HW shutdown zones.
- (d) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in section 6 of this IHA.

6. Reporting

- (a) The Holder must submit its draft report(s) on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days

prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.

- (b) All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.demarest@noaa.gov*.
- (c) The marine mammal report must contain the informational elements described in the Monitoring Plan and, at minimum, must include:
 - (i) Dates and times (begin and end) of all marine mammal monitoring;
 - (ii) Construction activities occurring during each daily observation period, including:
 - A. The number and type of piles that were driven and the method (e.g., impact, vibratory, down-the-hole); and
 - B. Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving).
 - (iii) PSO locations during marine mammal monitoring;
 - (iv) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
 - (v) Upon observation of a marine mammal, the following information:
 - A. Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
 - B. Time of sighting;

- C. Identification of the animal(s) (e.g., genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
 - D. Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
 - E. Estimated number of animals (min/max/best estimate);
 - F. Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
 - G. Animal's closest point of approach and estimated time spent within the harassment zone;
 - H. Description of any marine mammal behavioral observations (e.g., observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (e.g., no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- (vi) Number of marine mammals detected within the harassment zones, by species; and
 - (vii) Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.
- (d) The Holder must submit all PSO data electronically in a format that can be queried such as a spreadsheet or database (*i.e.*, digital images of data sheets are not sufficient).
 - (e) Reporting injured or dead marine mammals:

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.demarest@noaa.gov*) and to the West Coast regional stranding network

(1-866-767-6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. The Holder must not resume their activities until notified by NMFS.

The report must include the following information:

- (i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- (ii) Species identification (if known) or description of the animal(s) involved;
- (iii) Condition of the animal(s) (including carcass condition if the animal is dead);
- (iv) Observed behaviors of the animal(s), if alive;
- (v) If available, photographs or video footage of the animal(s); and
- (vi) General circumstances under which the animal was discovered.

7. This Authorization may be modified, suspended or revoked if the Holder fails to abide by the conditions prescribed herein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines: (1) the authorized taking is likely to have or is having more than a negligible impact on the species or stocks of affected marine mammals, or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat.


8. Renewals

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities (or a subset of those activities) are planned or (2) the specified activities will not be completed by the time the IHA expires

and a Renewal would allow for completion of the activities, provided all of the following conditions are met:

- (a) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (note a Renewal IHA expiration date cannot extend beyond one year from expiration of this IHA).
- (b) The request for renewal must include the following:
 - (i) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed for this IHA, are a subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
 - (ii) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
- (c) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings made in support of this IHA remain valid.

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Kimberly Damon-Randall,
Director, Office of Protected Resources
National Marine Fisheries Service

Table 1. Authorized Incidental Take.

Common name	Scientific name	Stock	Level A harassment	Level B harassment
Gray whale	<i>Eschrichtius robustus</i>	Eastern north Pacific	0	38
Minke whale	<i>Balaenoptera acutorostrata</i>	California/Oregon/Washington	0	19
Killer whale	<i>Orcinus rectipinnus</i>	West Coast Transient	0	380
Bottlenose dolphin	<i>Tursiops truncatus</i>	California Coastal	0	38
Long-beaked common dolphin	<i>Delphinus capensis</i>	California	0	38
Pacific white-sided dolphin	<i>Lagenorhynchus obliquidens</i>	California/Oregon/Washington	0	38
Dall's porpoise	<i>Phocoenoides dalli</i>	California/Oregon/Washington	0	95
Harbor porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters	0	1,368
California sea lion	<i>Zalophus californianus</i>	U.S.	0	551
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern	0	190
Harbor seal	<i>Phoca vitulina</i>	Washington Inland Waters	0	608
Northern elephant seal	<i>Mirounga angustirostris</i>	California	0	19

Table 2. Shutdown and Harassment Zones.

Pile size, type, and method	Minimum shutdown zone (m)					Harassment zone (m)
	Low-frequency	Mid-frequency	High-frequency	Phocid	Otariid	
14-in, steel H-piles, vibratory removal	50	50	50	50	50	1,600
24-in, steel pipe piles, vibratory installation and removal	100	100	100	50	50	15,410*
24-in, steel pipe piles, impact installation	100	100	100	50	50	750
30-in, steel pipe piles, vibratory installation	100	100	100	50	50	15,410*
78-in, steel pipe piles, vibratory installation	100	100	100	50	50	15,410*

**15,410 m is the maximum distance sound can travel before reaching land*