



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XR020**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Mukilteo Multimodal Project in Mukilteo, Washington.**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; Reissuance of incidental harassment authorization.

**SUMMARY:** NMFS has received a request from the Washington State Department of Transportation (WSDOT) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates that are ten months later (August 1, 2019 – July 31, 2020). The initial IHA authorized take of 12 species of marine mammals, by Level A and Level B harassment, incidental to construction associated with the Mukilteo Multimodal Project in Mukilteo, Washington. The project has been delayed and none of the work covered in the initial IHA (effective October 1, 2018 – September 30, 2019) has been conducted. The scope of the activities and anticipated effects remain the same, authorized take numbers would not change, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2018 IHA referenced above. NMFS is, therefore, issuing a second IHA to cover the identical incidental take analyzed and authorized in the initial IHA.

**DATES:** This authorization is effective from August 1, 2019 through July 31, 2020.

**ADDRESSES:** An electronic copy of the final 2018 IHA previously issued to WSDOT, WSDOT's application, and the **Federal Register** notices proposing and issuing the 2018 IHA may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see FOR FURTHER INFORMATION CONTACT).

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

### **Summary of Request**

On August 28, 2018, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the Mukilteo Multimodal Project at the Mukilteo ferry terminal (83 FR 43849). The effective dates of that IHA were October 1, 2018 through September 30, 2019. On May 8, 2019, WSDOT informed NMFS that the project was being delayed by one year. None of the work identified in the IHA (*i.e.* pile driving and removal) has occurred and no take of any marine mammals has occurred since the effective date of the initial IHA. WSDOT submitted a formal request for a new identical IHA that would be effective from August 1, 2019 through July 31, 2020, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, an IHA is appropriate.

### **Summary of Specified Activity and Anticipated Impacts**

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

Planned activities include improving the operations and facilities serving the mainland terminus of the Mukilteo-Clinton ferry route in Washington State. Specifically, the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the original IHA. The mitigation and monitoring are also identical to the original IHA and will include limiting construction to an in-water work window (July 15 – February 15), limiting construction to daylight hours only, using bubble curtains during impact driving of steel piles, using soft-start during impact pile driving, and monitoring and reporting of qualified protected species observers (PSOs).

Species that are expected to be taken by the planned activity include harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), Steller sea lion (*Eumetopias jubatus*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), Dall’s porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), minke whale (*Balaenoptera acutorostrata*), bottlenose dolphin (*Tursiops truncatus*), and long-beaked common dolphin (*Delphinus capensis*). The takes authorized in the 2018 IHA are presented in Table 1.

**Table 1. Authorized Take Amount by Species.**

<b>Species</b>	<b>Level A</b>	<b>Level B</b>	<b>Total Take</b>
Harbor seal	93	1,860	1953
California sea lion	0	868	868
Northern elephant seal	0	7	7
Killer whale (West coast transient)	0	19	19
Steller sea lion	0	154	154
Gray whale	0	2	2

Humpback whale	0	6	6
Dall's porpoise	39	163	202
Harbor porpoise	39	784	823
Minke whale	0	7	7
Bottlenose dolphin	0	49	49
Long-beaked common dolphin	0	49	49

A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the original IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the 2018 IHA for WSDOT's construction work (83 FR 43849), WSDOT's application, the **Federal Register** notice of the proposed IHA (83 FR 30421, June 28, 2018), and all associated references and documents.

### **Determinations**

WSDOT will conduct activities identical to those analyzed in the previous 2018 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the 2018 IHA and no new information has emerged that would change those findings. The re-issued 2019 IHA includes identical required mitigation, monitoring, and reporting measures as the 2018 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) WSDOT's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

### **National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

### **Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region

Protected Resources Division, whenever we propose to authorize take for endangered or threatened species. The effects of this proposed federal action were adequately analyzed in NMFS' Biological Opinion for the Mukilteo Multimodal Project, dated August 1, 2017, which concluded that the take NMFS proposes to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

### **Authorization**

NMFS has issued an IHA to WSDOT for in-water construction activities associated with the Mukilteo Multimodal Project from August 1, 2019 through July 31, 2020. All previously described mitigation, monitoring, and reporting requirements from the 2018 IHA are incorporated.

Dated: August 6, 2019.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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