



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

**[RTID 0648-XB171]**

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seattle Multimodal Project at Colman Dock in Washington State**

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

**ACTION:** Notice; request for comments on proposed Renewal incidental harassment authorization.

**SUMMARY:** NMFS received a request from the Washington State Department of Transportation (WSDOT) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Seattle Multimodal Project at Colman Dock in Seattle, Washington State. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period.

**DATES:** Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Fowler@noaa.gov*.

*Instructions:* NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the 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 proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, 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, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in

the Detailed Description of Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial 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); and
- 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; and

(3) 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 in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

[www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-)

*authorization-renewals*. Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

### **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 (*i.e.*, the issuance of an IHA Renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) 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. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA Renewal qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA Renewal request.

### **History of Request**

On September 3, 2020, NMFS issued an IHA to WSDOT to take marine mammals incidental to the fourth year of work associated with the Seattle Multimodal Project at Colman Dock in Seattle, Washington (85 FR 59737; September 23, 2020), effective from September 10, 2020 through September 9, 2021. The initial IHA covered

one year of the larger project for which WSDOT obtained prior IHAs (82 FR 31579, July 7, 2017; 83 FR 35226, July 25, 2018; 84 FR 36581, July 29, 2019). On March 18, 2021, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

### **Description of the Specified Activities and Anticipated Impacts**

WSDOT has requested incidental take for construction activities related to the Seattle Multimodal Project at Colman Dock in Seattle, Washington State. The activities addressed in this request represent a subset of the activities analyzed in the initial IHA, consisting of vibratory pile removal only, and are identical to the activities described in the initial IHA.

Accordingly the proposed authorized take is for the same eleven species authorized in the initial IHA (see Table 4), and the amount of take is reflective of the take estimation methods described in the initial IHA applied to the remaining work described below.

The following documents are referenced in this notice and include important supporting information:

- Initial 2020 final IHA (85 FR 59737; September 23, 2020);
- Initial 2020 proposed IHA (85 FR 40992; July 8, 2020); and
- Initial IHA application, references cited, marine mammal monitoring plan,

preliminary monitoring report, and previous public comments received (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>).

#### *Detailed Description of the Activity*

A detailed description of the pile installation and removal activities for which take was authorized in the initial IHA may be found in the **Federal Register** notices of the proposed and final IHA for the initial authorization (85 FR 40992, July 8, 2020; 85 FR 59737, September 23, 2020). Only a subset of the construction activities remain to be conducted, and the location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

Below and in Table 1 we describe the specific in-water pile driving and pile removal activities that were planned and already occurred under the initial IHA and those that remain to be completed under this renewal IHA:

- Vibratory driving followed by impact proofing (driving) of 36-inch steel piles. A total of 73 piles were installed using the vibratory hammer over 9 days, with an average of approximately 8 piles installed per day. Vibratory pile driving and impact proofing occurred on different days;
- Vibratory driving and then removal of 24-inch temporary steel piles. A total of 30 piles were planned be installed and later removed, with an average of 8 piles installed/removed per day;
- Vibratory removal of 355 14-inch timber piles over 18 days, with approximately 20 piles removed per day; and
- Vibratory removal of 30 12-inch steel piles over 3 days, with 10 piles removed per day.

All vibratory and impact pile installation was completed. Only vibratory removal of timber and temporary steel piles remains to be completed (Table 1).

**Table 1. Summary of Planned In-Water Pile Driving**

<b>Pile size and type</b>	<b>Method</b>	<b>Number of piles planned to be completed in initial IHA</b>	<b>Number of piles completed under initial IHA</b>	<b>Number of piles to be completed in IHA Renewal</b>
36-inch Steel	Impact drive (proof)	73*	73	0
36-inch Steel	Vibratory drive	73*	73	0
24-inch Steel (temporary)	Vibratory drive	30*	30	0
24-inch Steel (temporary)	Vibratory remove	30*	5	25
14-inch Timber	Vibratory remove	355	316	39
12-inch Steel	Vibratory remove	30	30	0

\* These are same piles

The total estimated duration of pile driving activities planned in the initial IHA was 47 days. In consideration of the time required to remove each pile using a vibratory hammer and the number of piles that may be removed per day, a total of eight days of work remain to remove the rest of the timber piles and temporary steel piles (Table 2).

Due to NMFS and U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect Endangered Species Act (ESA)-listed salmonids, planned WSDOT in-water construction is limited each year to July 15 through February 15 at this location. For this project, in-water construction is planned to take place between August 1, 2021 and February 15, 2022. The proposed Renewal would be effective from August 1, 2021 through July 31, 2022.

**Table 2. Estimated Duration of Remaining In-Water Vibratory Pile Removal**

<b>Pile size and type</b>	<b>Number of piles remaining</b>	<b>Piles per day</b>	<b>Minutes per pile</b>	<b>Duration (days)</b>
24-inch steel	25	8	20	4
14-inch timber	39	10	15	4

### *Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status,



distribution, and hearing, may be found in the **Federal Register** notice of proposed IHA for the initial authorization (85 FR 40992; July 8, 2020) and the **Federal Register** notice of proposed IHA for the Year 3 Seattle Multimodal Project at Colman Dock (84 FR 25757; June 4, 2019) and. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

#### *Potential Effects on Marine Mammals and their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the **Federal Register** notice of proposed IHA for the initial authorization (85 FR 40992; July 8, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

#### *Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of proposed IHA (85 FR 40992; July 8, 2020) and final IHA (85 FR 59737; September 23, 2020) for the initial authorization. Specifically, the source levels, corresponding Level A and Level B harassment zones (in m) and ensonified areas (in square kilometers (km<sup>2</sup>); Table 3), and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The only change

from the methods used to estimate take in the initial IHA is the total duration (days) of pile driving activities, which has been reduced from a total of 47 days of activities, occurring over the course of seven months, in the initial IHA to 8 days of remaining activities estimated to occur within one month.

**Table 3. Level A and Level B Harassment Zones and Ensonified Areas**

Pile type, size & pile driving method	Level A harassment distance (m) / area (km <sup>2</sup> )					Level B harassment distance (m) / area (km <sup>2</sup> )
	LF cetacean	MF cetacean	HF cetacean	Phocid	Otariid	
Vibratory drive/removal, 24 inch steel piles	96.6 / 0.03	8.6 / 0.00	142.8 / 0.06	58.7 / 0.01	4.1 / 0.00	8,690 / 40.53
Vibratory removal 14 inch timber pile	8.0 / 0.00	0.7 / 0.00	11.8 / 0.00	4.8 / 0.00	0.3 / 0.00	2,154 / 5.47

LF = low-frequency; MF = mid-frequency; HF = high-frequency

Authorized takes would be by Level B harassment only, as use of the vibratory hammer has the potential to result in disruption of behavioral patterns for individual marine mammals. The initial IHA authorized take of harbor seals and harbor porpoises by Level A harassment from impact pile driving. However, as described in the initial IHA, based on the nature of the activity remaining in this Renewal (vibratory pile driving) and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdown, see Proposed Mitigation below), Level A harassment is neither anticipated from vibratory pile driving and is not proposed to be authorized here.

As described in the initial IHA, the initial approach for take calculation was to use the information aggregated in the U.S. Navy Marine Species Density Database (U.S. Navy, 2019) with the following equation:

$$\text{Total Take} = \text{marine mammal density} \times \text{ensonified area} \times \text{pile driving days}$$

However, also as described in the initial IHA, adjustments were made to all of these initial estimates based on prior observation of marine mammals in the project area and account for group numbers, and in fact most estimates were based on a predicted number of individuals entering the Level B harassment zone per month, with several

estimates also based on a predicted number entering per day. Take estimates for the activities remaining in this renewal IHA were developed using the identical methods as the initial IHA, in consideration of the remaining 8 days of work, and equated to one month where monthly estimates were used. Table 4 indicates the number of each species or stock proposed for authorization. .

**Table 4. Estimated Take Proposed to be Authorized by Species and Stock**

Species	Total proposed take	Stock	Stock abundance	Percent of stock
Gray whale	1	Eastern North Pacific	26,960	0.004
Humpback whale	3	California/Oregon/Washington	2,900	0.103
Minke whale	1	California/Oregon/Washington	636	0.157
Killer whale	10	West Coast transient	349	2.865
Bottlenose dolphin	7	California/Oregon/Washington offshore	1,924	0.364
Harbor porpoise	100	Washington inland waters	11,233	0.890
Dall's porpoise	5	California/Oregon/Washington	25,750	0.019
Harbor seal	720	Washington northern inland waters	11,036	6.524
Northern elephant seal	1	California breeding	179,000	0.001
California sea lion	232	U.S.	257,606	0.090
Steller sea lion	8	Eastern U.S.	43,201	0.019

We have reviewed the preliminary monitoring report submitted by WSDOT and the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized and, therefore, these estimates are appropriate.

*Description of Proposed Mitigation, Monitoring and Reporting Measures*

The proposed mitigation, monitoring, and reporting measures included as

requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 59737; September 23, 2020), with the exception of mitigation measures specific to impact pile driving, which will not occur under this IHA. The discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

#### Proposed Mitigation

*Time Restriction* – The applicant stated that work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between August 1, 2021, and February 15, 2022.

*Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones* – Before the commencement of in-water construction activities, which include vibratory pile removal, WSDOT shall establish Level A harassment zones where received underwater sound pressure levels (SPLs) or cumulative sound exposure levels (SEL<sub>cum</sub>) could cause permanent threshold shift (PTS).

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 120 decibels root-mean-square (dB<sub>rms</sub>) re 1 microPascal (μPa) for continuous noise sources (*e.g.*, vibratory pile removal).

WSDOT shall establish exclusion zones as shown in Table 5 to prevent Level A harassment takes of all marine mammal hearing groups.

For in-water heavy machinery work other than pile driving (*e.g.*, standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane.

WSDOT shall establish exclusion zones for Southern Resident killer whales (SRKW) and all marine mammals for which takes are not authorized at the Level B harassment distances. Specifically, for vibratory removal of 24-inch steel piles, a 8.7 km exclusion zone shall be established. For vibratory removal of 14-inch timber piles, a 2.2 km exclusion zone shall be established.

A summary of exclusion zones is provided in Table 5.

**Table 5. Exclusion Zones by Species and Hearing Group**

Pile type and size	Exclusion distance (m)					
	LF	MF	HF	Phocid	Otariid	SRKW
24-inch steel	100	10	150	60	10	8,700
14-inch timber	10	10	15	10	10	2,200

NMFS-approved protected species observers (PSOs) shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones beginning 30 minutes before removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile removal, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 15 minutes have elapsed since the last sighting.

*Shutdown Measures* – WSDOT shall implement shutdown measures if a marine mammal is detected within or entering an exclusion zone listed in Table 5.

WSDOT shall also implement shutdown measures if SRKW are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

If a killer whale approaches the Level B harassment zone during pile driving or removal, and it is unknown whether it is a SRKW or a transient killer whale, it shall be assumed to be a SRKW and WSDOT shall implement the shutdown measure.

If a SRKW or an unidentified killer whale enters the Level B harassment zone undetected, in-water pile driving or pile removal shall be suspended until the whale exits the Level B harassment zone, or 15 minutes have elapsed with no sighting of the animal, to avoid further Level B harassment.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

*Coordination with Local Marine Mammal Research Network* – Prior to the start of pile driving for the day, WSDOT shall contact the Orca Network and/or Center for Whale Research to find out the location of the nearest marine mammal sightings. The Local Marine Mammal Research Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the United States and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: the NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan

Island) to study orca communication, in-water noise, bottom fish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

#### Proposed Monitoring and Reporting

*Monitoring Measures* – WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its Seattle Multimodal Project at Colman Dock. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.*, not construction personnel) are required;
2. At least one observer must have prior experience working as an observer;
3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;
4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
5. NMFS will require submission and approval of observer Curriculum Vitas;

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.*, Zeiss, 10 x 42 power). Due to the different sizes of zones of influence (ZOIs) from different pile sizes, several different ZOIs and different monitoring protocols corresponding to a specific pile size will be established. During

vibratory removal of 24-inch steel piles, four land-based PSOs and one ferry-based PSO will monitor the zone. During vibratory removal of 14-inch timber piles, four land-based PSOs will monitor the zone. Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

To verify the required monitoring distance, the exclusion zones and zones of influence will be determined by using a range finder or hand-held global positioning system device.

*Reporting Measures* – WSDOT is required to submit a draft report on all marine mammal monitoring conducted under the IHA (if issued) within 90 calendar days of the completion of the project. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS.

The marine mammal report must contain the informational elements described in the Marine Mammal Monitoring Plan for the initial IHA, dated May 12, 2020, including, but not limited to:

1. Dates and times (begin and end) of all marine mammal monitoring;
2. Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed;
3. Weather parameters and water conditions during each monitoring period (e.g., wind speed, percent cover, visibility, sea state);
4. The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
5. Age and sex class, if possible, of all marine mammals observed;
6. PSO locations during marine mammal monitoring;



7. Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);
8. Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level B harassment zones while the source was active;
9. Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone;
10. Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
11. Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and
12. Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, WSDOT shall report the incident to the Office of Protected Resources (OPR) (301-427-8401), NMFS and to the West Coast Region (WCR) regional stranding coordinator (1-866-767-6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, WSDOT must immediately cease the specified activities until NMFS 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 the IHA. WSDOT must not resume their activities until notified by NMFS.

The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

### **Comments and Responses**

As noted previously, NMFS published a notice of a proposed IHA (85 FR 40992; July 8, 2020) and solicited public comments on both our proposal to issue the initial IHA for the Seattle Multimodal Project at Colman Dock and on the potential for a Renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (85 FR 59737; September 23, 2020). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the initial 2020 IHA.

*Comment:* The Marine Mammal Commission recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies.

*Response:* In prior responses to comments about IHA Renewals (*e.g.*, 84 FR 52464; October 02, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the Renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, provides additional efficiencies beyond the use of abbreviated notices, and, further, promotes NMFS' goals of improving

conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the Renewal process.

### **Preliminary Determinations**

The construction activities proposed by WSDOT are a subset of, and identical to, those analyzed in the initial IHA, and the method of taking and the effects of the action are identical to the initial IHA (though the amount of proposed authorized take is notably lower). The potential effects of WSDOT's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the 2020 IHA, NMFS determined that WSDOT's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis 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; (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, and; (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act**

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 only species listed under the ESA with the potential to be present in the action area are the Mexico Distinct Population Segment (DPS) and Central America DPS of humpback whales. The effects of this Federal action were adequately analyzed in NMFS' Biological Opinion for the Seattle Multimodal Project at Colman Dock, Seattle, Washington, dated October 1, 2018, which concluded that issuance of an IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

### **Proposed Renewal IHA and Request for Public Comment**

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to WSDOT to conduct the Seattle Multimodal Project at Colman Dock Year 4 in Washington State, between August 1, 2021 and July 31, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: June 17, 2021.

**Catherine Marzin,**

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