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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 261112-0006]

RIN 0648-BO18

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

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

ACTION: Final rule; notice of issuance of letter of authorization.

SUMMARY: NMFS, upon request from the Washington State Parks and Recreation Commission (State Parks), issues this final rule and associated 5-year letter of authorization (LOA) pursuant to the Marine Mammal Protection Act (MMPA) to govern the taking of marine mammals incidental to construction activities conducted in support of the Marine Facilities Replacement Program (MFRP) in North Puget Sound in Western Washington (WA) over the course of 5 years. This final rule prescribes permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat and establishes requirements for monitoring and reporting such taking.

DATES: Effective from November 17, 2026 through November 17, 2031.

ADDRESSES: Electronic copies of the LOA, application, supporting documents, and a list of the references cited in this document may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-*

parks-and-recreation-commissions-marine. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Krista Graham, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the take of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq*.) directs 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 promulgated and an LOA is issued or an incidental harassment authorization is issued.

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). If such findings are made, 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 the species or stocks for taking for certain subsistence uses (collectively referred to as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of applicable MMPA statutory terms are provided directly below or included in the relevant sections of this rule.

- *U.S. citizen* — individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13); (50 CFR 216.103);
- *Take* — to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13));
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking* — an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable, or accidental (50 CFR 216.103);
- *Level A harassment* — any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
- *Level B harassment* — any act of pursuit, torment, or annoyance which 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 (16 U.S.C. 1362(18); 50 CFR 216.3).

Purpose of Regulatory Action

NMFS received an application from State Parks requesting 5-year regulations and an LOA issued thereunder to take 10 species of marine mammals, comprising 10 stocks of marine mammals, by Level A harassment and Level B harassment incidental to the State Parks' MFRP activities. No serious injury or mortality is anticipated or authorized. Please see **Background** for definitions of harassment.

These regulations, promulgated under the authority of the MMPA (16 U.S.C. 1361 *et seq*.), provide a framework for authorizing the take of marine mammals incidental to construction activities associated with the MFRP project, including

vibratory, impact, and rock drilling pile driving. These regulations include mitigation, monitoring, and reporting requirements. These requirements, proposed by State Parks, are expected to minimize the number and/or intensity of marine mammal take incidents, provide information to better understand the impacts of the action, and document compliance. State Parks has agreed that all the mitigation measures are practicable. As required by the MMPA, NMFS concurred that these measures are sufficient to achieve the least practicable adverse impact on the affected marine mammal species or stocks and their habitat.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce 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 for up to 5 years if, after notice and public comment, the agency makes certain findings and promulgates regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat (see the discussion below in the **Mitigation** section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule, which contains 5-year regulations.

Summary of Major Provisions within the Rule

The following is a summary of the major provisions of this rule regarding State Parks' MFRP activities. These measures include:

- Prescribing permissible methods of taking small numbers of marine mammals by Level A harassment and/or Level B harassment incidental to the MFRP project;

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Establishment of shutdown zones;
- Bubble curtains required for impact driving of steel piles;
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power; and
- Submittal of monitoring reports, including a summary of marine mammal species and behavioral observations, construction shutdowns or delays, and construction work completed.

Through adaptive management, the regulations allow NMFS' Office of Protected Resources to modify (*e.g.*, remove, revise, or add to) the existing mitigation, monitoring, or reporting measures summarized above and required by the LOA.

Summary of Request

On April 30, 2025, NMFS received an application from State Parks requesting authorization to take marine mammals incidental to the MFRP (*e.g.*, for the repair and improvement of six marine facilities in four State Parks within North Puget Sound, WA). Following NMFS' review of the application, State Parks submitted a revised application on July 25, 2025. Following additional communication with the applicant, NMFS was notified that State Parks was substantially modifying its application. State Parks submitted a revised application on March 23, 2026, that we deemed adequate and complete on March 24, 2026.

On March 30, 2026, NMFS published a notice of receipt of application in the **Federal Register** (91 FR 15597), requesting comments and information during a 30-day public comment period related to State Parks' request. No comments were received.

On August 11, 2026, NMFS published a proposed rule and request for comments in the **Federal Register** (91 FR 51884), which was open through September 10, 2026. A

summary of public comments received is described in the **Comments and Responses** section of this final rule; full public comments may be viewed at *https://www.regulations.gov/docket/NOAA-NMFS-2026-1255*.

Description of the Specified Activities

Overview

The State Parks' MFRP project will remove, replace, and improve six marine facilities at four State Parks in North Puget Sound, WA. This includes Reid and Prevost Harbors at Stuart Island Marine State Park (MSP), Fossil Bay at Sucia Island MSP, Bowman Bay and Rosario Pier at Deception Pass State Park, and Olga Pier at Olga State Park. These improvements will make the facilities more accessible to visitors while minimizing environmental impacts. In-water construction activities include removing and/or replacing degraded and unsafe timber piles, piers, ramps, and float assemblages. Replaced facilities will include galvanized steel piles and added aluminum components (*e.g.*, platforms, walkways, a gangway, and floats). Construction methods include pile driving (vibratory, impact, rock drilling, and down-the-hole (DTH) drilling) and pile removal (pulling with a crane or, potentially, a vibratory extractor). Of these activities, only pile removal and installation are anticipated to result in take by Level A harassment or Level B harassment due to elevated underwater noise.

Dates and Duration

State Parks anticipates that in-water construction activities associated with the MFRP project will occur at each location within the annual in-water work windows established by the Washington Department of Fish and Wildlife to protect various fish species. Activities are planned to occur at Reid Harbor and Bowman Bay beginning in fall 2026 (upon LOA issuance) through February 15, 2027 (Year 1); at Prevost Harbor and Fossil Bay sometime between September 1, 2027, and February 15, 2028 (Year 2); at Rosario Pier sometime between August 1, 2028, and February 15, 2030 (Years 3 or 4);

and finally, at Olga Pier sometime between September 1, 2030, and February 15, 2031 (Year 5) (table 1). In-water construction delays may occur due to several factors, including project funding, permitting requirements, equipment and/or material availability, weather-related delays, equipment maintenance and/or repair, and other contingencies.

Table 1 -- Summary of estimated dates, duration, and relevant seasonal issues for projects within the MFRP

Project	In-Water Work Window	Projected Year of In-Water Construction	Project Duration of In-Water Construction[1]	Important Seasonal Issues
Stuart Island MSP				
Reid Harbor	Sept 1-Feb 15	LOA Year 1 (2026–2027)	Up to 30 days	None
Prevost Harbor	Sept 1-Feb 15	LOA Year 2 (2027–2028)	Up to 30 days	None
Sucia Island MSP				
Fossil Bay	Sept 1-Feb 15	LOA Year 2 (2027–2028)	Up to 30 days	None
Deception Pass State Park				
Bowman Bay	Sept 1-Feb 15	LOA Year 1 (2026–2027)	Up to 30 days	- Northern elephant seal pupping – Jan-Feb - Northern elephant seal haul-out (single animals) – Jan-June
Rosario Pier	Aug 1-Feb 15	LOA Years 3 or 4 (2028–2030)[2]	Up to 10 days	- Northern elephant seal pupping – Jan-Feb - Northern elephant seal haul-out (single animals) – Jan-June
Olga State Park				
Olga Pier	Sept 1-Feb 15	LOA Year 5 (2030–2031)	Up to 30 days	None

[1] The project dates and duration reflect the total estimated duration of the in-water work portions of the project (*e.g.*, in addition to pile driving or removal, in-water work may include moving equipment around the site, floating in new floats, or direct pulling of piles with a crane).

[2] Because the timing of construction is uncertain, estimated exposures would occur either during Year 3 or Year 4.

Specific Geographical Region

The MFRP activities are in bays and harbors around North Puget Sound, specifically in Reid Harbor and Prevost Harbor in Stuart Island MSP, Fossil Bay in Sucia Island MSP, Bowman Bay and Rosario Pier in Deception Pass State Park, and Olga Pier in Olga State Park. These four state parks are located within a group of islands known as the San Juan Islands and Deception Pass in San Juan, Skagit, and Island Counties in Western Washington (figures 1 and 2).

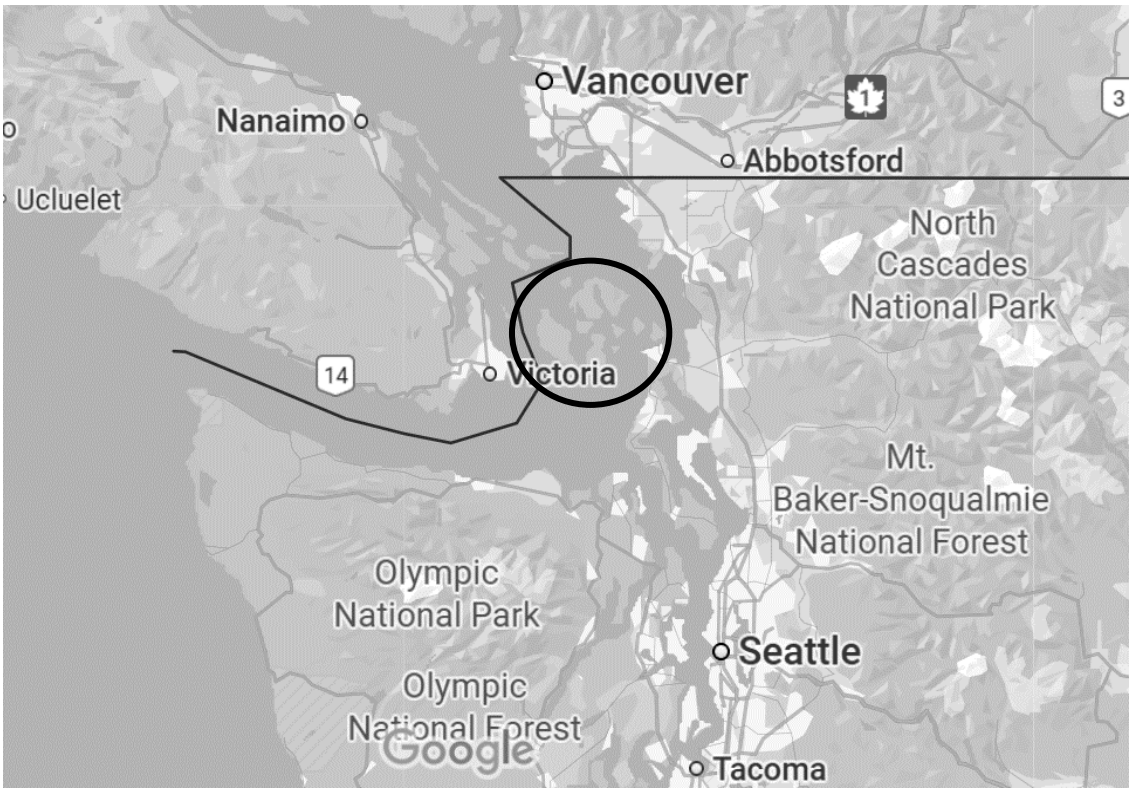

Figure 1 -- MFRP activities in the North Puget Sound, WA, project area are denoted by a circle

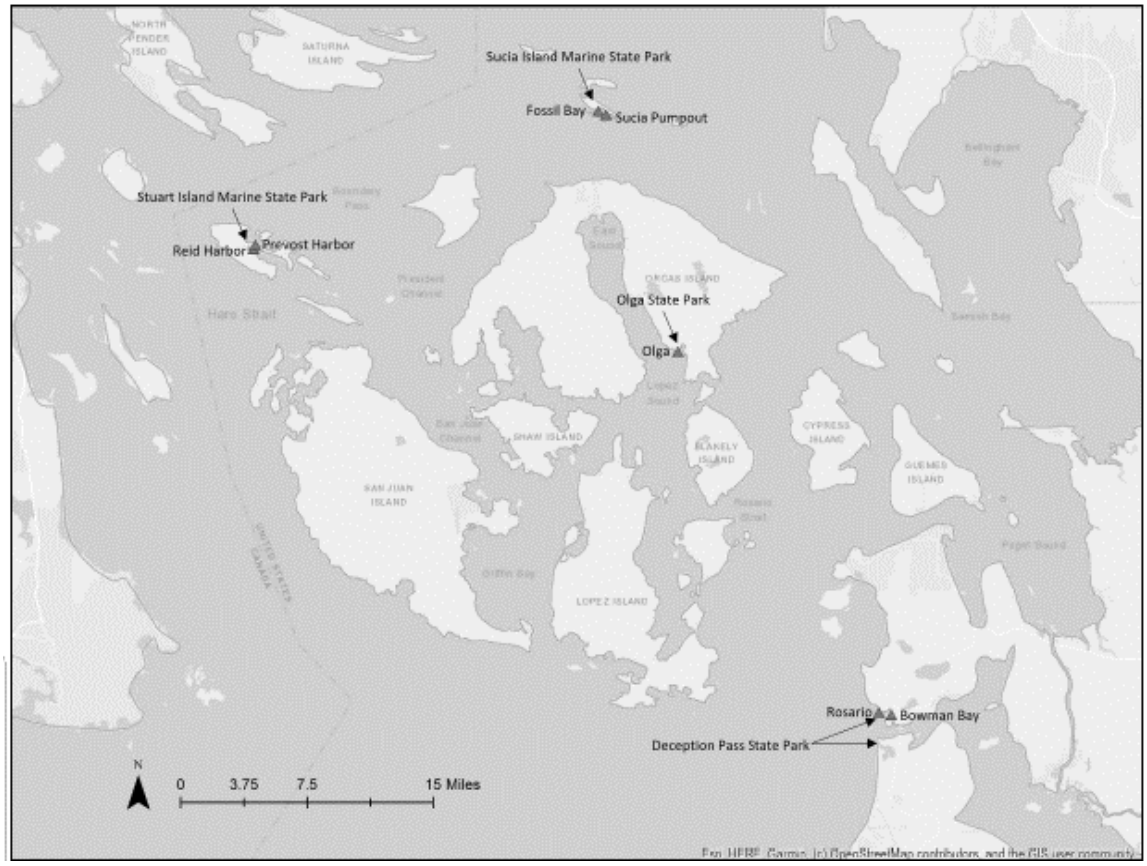

Figure 2 -- Zoomed-in vicinity map of State Parks' project sites in North Puget Sound, WA

Detailed Description of the Specified Activity

A detailed description of State Parks' planned activities is provided in the proposed rule (91 FR 51884). Since publication of the proposed rule, State Parks has not modified its activities; therefore, we direct the reader to the proposed rule for a detailed description.

Comments and Responses

NMFS published the proposed rule (91 FR 51884) on August 11, 2026, with a 30-day comment period. NMFS received five comments, all from the general public. Some commenters supported physically replacing aging park infrastructure, while others expressed general support for marine mammal conservation. As these comments did not provide information specific to NMFS' proposed action, we do not address them further. Two commenters noted minor inconsistencies, *e.g.*, with the Fossil Bay project schedule and the number of species for which take would be authorized; we have corrected these inconsistencies in this final rule. Relevant comments and NMFS' responses are provided below.

Comment 1: Two commenters expressed concern about the increase in authorized take by Level A harassment relative to calculated exposures for harbor seals and harbor porpoises. In the proposed rule, State Parks' exposure calculations yielded zero exposures exceeding Level A harassment criteria for harbor seals and four exposures exceeding Level A harassment for harbor porpoises, over 5 years. Yet State Parks requested, and NMFS proposed, authorizing Level A harassment takes of 20 for harbor seals and 25 for harbor porpoises.

Response 1: The MMPA ITA process necessitates estimating the number of takes, by species or stock, that are likely to occur because of a specified activity. As with most models or estimates of biological outcomes, the result is a well-informed approximation, and we considered the best available information to further inform our analyses and

findings. While we did not use a specific quantitative formula or upper-limit constraint when deciding whether and how to refine the number of takes (*i.e.*, from 0 to 20 Level A harassment takes for harbor seals and from 4 to 25 Level A harassment takes for harbor porpoises), we did consider qualitative factors such as group size of harbor seals (1–500 at haul outs (Jefferies *et al.*, 2000)) and harbor porpoises (1.9; Suryan and Harvey, 2012), their low profile and detectability, historical sightings data, and seasonal patterns. We also considered other information, such as the applicant's site-specific knowledge of species in the project area. For the State Parks' MFRP project, these biological factors led us to slightly increase the proposed authorized Level A harassment takes for both harbor seals and harbor porpoises. The commenter does not provide information supporting a position that the authorized takes are not likely to occur.

Comment 2: Two commenters noted that State Parks proposed, and NMFS concurred, in excluding humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalis*), and Southern Resident killer whales (SRKW) (*Orcinus orca*) from take authorization because they are highly conspicuous and trackable through the Orca Network, a volunteer public sightings forum. The rule separately directs Protected Species Observers (PSOs) to contact that same Orca Network before pile-driving activities begin for daily updates on killer whale and large-cetacean sightings. The commenters suggest that, because the volunteer resource underlies both the exclusion determination for an Endangered Species Act (ESA)-listed stock and the day-to-day operational monitoring protocol, NMFS should formalize standard, agency-enforced backup protocols if Orca Network activity degrades or ceases.

Response 2: While the mitigation requirements direct PSOs to contact the Orca Network by phone or via social media (*e.g.*, its Facebook page) before any pile-driving activities to receive a daily update on killer whale and large cetacean sightings, as the commenters noted, it was not the sole reason for excluding take for these species. We

also considered their frequency and their likelihood of occurrence in the project area. We also considered the site-specific density and nearby survey information reported by the U.S. Navy (U.S. Department of the Navy, 2019). Based on the best available information and the mitigation and monitoring that will be implemented, incidental take is unlikely for these species, especially with mitigation. Moreover, this real-time sighting network has been available since 2001, and we do not anticipate a lack of real-time sighting reports.

Comment 3: One commenter stated that a 5-year multi-site industrial pile-driving program across six island locations in North Puget Sound creates extraordinary circumstances, meaning the action has the potential for significant environmental effects, including impacts on sensitive species and cumulative environmental effects, and NMFS must, therefore, prepare an environmental assessment (EA) or environmental impact statement to evaluate regional acoustic footprints.

Response 3: Where, as here, NMFS finds that its action falls within an established categorical exclusion, we must also evaluate whether extraordinary circumstances have the potential to create circumstances in which a normally excluded action would have significant environmental effects. That evaluation is limited to the decision NMFS is responsible for, which is the issuance of an ITA (NMFS' action). While the underlying action (*i.e.*, removing derelict wooden piles, piers, and docks and replacing them with steel and aluminum structures) may have environmental effects such as increased turbidity, sedimentation, and sound, the potential effects of NMFS' action are limited to those that would result from authorizing incidental take of marine mammals. NMFS prepared numerous EAs analyzing the environmental impacts of the categories of activities encompassed by Categorical Exclusion B4, resulting in Findings of No Significant Impact. These EAs showed that issuing an ITA for these categories of activities (*i.e.*, routine in-water construction) did not result in significant impacts on the

human or physical environment, as NMFS' action affects only the marine mammals subject to the ITA. These EAs demonstrate that issuing ITAs for the categories of activities encompassed by CE B4 does not significantly affect the human or physical environment. Moreover, these routine construction projects will remove small-scale, decrepit floating timber moorage facilities and replace them with small-scale steel and aluminum components, allowing for safer moorage of vessels. Additionally, the mitigation measures implemented will provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. That is, the mitigation measures in this final rule include soft starts to notify species of impending louder sounds, and bubble curtain use during impact pile driving to dampen sound, as well as standard shutdown zones to avoid physical interaction of marine mammals and construction equipment. Therefore, NMFS has determined that the construction activities at issue in this final rule do not meet the definition of extraordinary circumstances, meaning the action does not have the potential for significant environmental effects.

Comment 4: One commenter requested that NMFS consult under ESA section 7 to specifically evaluate the indirect acoustic impacts on Chinook salmon (*Oncorhynchus tshawytscha*) prey availability for SRKWs.

Response 4: As discussed in the proposed rule as well as in response to Comment 2, no incidental take of ESA-listed species was proposed for authorization or expected to result from the proposed MFRP projects, nor will the proposed action destroy or adversely modify any designated critical habitat. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action. Additionally, any potential effects on prey are expected to be short-term and not likely to cause significant or long-term effects on individuals or adversely affect their populations.

Changes from the Proposed Rule to Final Rule

This final rule includes minor changes from the proposed rule. First, in determining the Level A harassment zones and ensonified areas for rock drilling, we misinterpreted the applicant's request and the results of Dazey *et al.* (2012). The application used a maximum rock drilling source level of 183 decibels (dB) root-mean-square (rms) at 1 meter (m). This source level equates to 168 dBrms at 10 m (based on 15logR). Additionally, a weighting factor adjustment of 2 instead of 2.5 is appropriate, and we adopt in this final rule NMFS' recommendations (NMFS, 2022) related to DTH, i.e., sound exposure level of a single strike (SELss) of 146 dB and a strike rate of 13 strikes per minute (standard for 18-inch piles). Therefore, we slightly adjust the calculated Level A harassment zones and ensonified areas for rock drilling for each marine mammal hearing group. The Level B harassment zone for rock drilling, however, remains unchanged for all hearing groups.

Second, we correct a minor transcription error for the number of takes of minke and gray whales. In the proposed rule, NMFS calculated six total Level B harassment exposures for minke whales (distributed as zero, two, zero, and four Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively). This final rule authorizes six total Level B harassment takes of minke whales across all 5 years (again, distributed as zero, two, zero, and four Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively). For gray whales, in the proposed rule NMFS calculated five total Level B harassment exposures (distributed as zero, two, zero, and three Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively). This final rule authorizes five total Level B harassment takes of gray whales across all 5 years (again, distributed as zero, two, zero, and three Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively) (see the **Estimated Take of Marine Mammals** section).

Description of Marine Mammals in the Area of Specified Activities

Ten species of marine mammals, comprising 10 stocks, may be taken by harassment incidental to State Parks' specified activities. A complete description of the marine mammals' status and trends, life history, habitat uses, and threats is included in State Parks' application and NMFS' proposed rule (91 FR 51884). NMFS is not aware of any new relevant information since publication of the proposed rule. Please refer to the proposed rule for detailed descriptions of marine mammals in the project area.

Table 2 lists all species or stocks for which take is expected and has been authorized by NMFS for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' stock assessment reports). All values presented in table 2 are the most recent available at the time of publication (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

Table 2 -- Species with estimated take from the specified activities

Common name[1]	Scientific name	MMPA Stock	ESA/MMPA status; Strategic (Y/N)[2]	Stock abundance (CV, N_{min}, most recent abundance survey)[3]	PBR	Annual M/SI[4]
Order Artiodactyla – Infraorder Cetacea – Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Minke whale	*Balaenoptera acutorostrata*	CA/OR/WA	-,-,N	915 (0.792, 509, 2018)	4.1	≥0.19
Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-,-,N	25,960 (0.05, 25,849, 2016)	801	131
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Orca or killer whale	*Orcinus orca*	West Coast Transient	-,-,N	349 (N/A, 349, 2018)[5]	3.5	0.4
Pacific white-sided dolphin	*Aethalodelphis obliquidens*	CA/OR/WA	-,-,N	34,999 (0.222, 29,090, 2018)	279	7
Family Phocoenidae (porpoises)						
Dall's porpoise	*Phocoenoides dalli*	CA/OR/WA	-,-,N	16,498 (0.61, 10,286, 2018)	99	≥0.66
Harbor porpoise	*Phocoena phocoena*	WA Inland Waters	-,-,N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Order Carnivora – Pinnipedia						
Family Phocidae (earless seals)						
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-,-,N	194,907 (N/A, 88,794, 2023)	5,328	11.2
Harbor seal	*Phoca vitulina*	WA Northern Inland Waters	-,-,N	15,898[6]	UND	9.8
Family Otariidae (eared seals and sea lions)						
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-,-,N	36,308 (N/A, 36,308, 2022)[7]	2,178	92.3
California sea lion	*Zalophus californianus*	U.S.	-,-,N	257,606 (N/A, 233,515, 2014)	14,011	>321

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).
[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T); MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.
[3] NMFS marine mammal stock assessment reports online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, a CV is not applicable. N/A indicates data are unknown. UND (undetermined) PBR indicates that data are available to calculate a PBR level, but a determination has been made that calculating a PBR level using those data is inappropriate (see the SAR for details).
[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, vessel strikes). Annual mortality and serious injury (M/SI) is often not precisely determined and is sometimes presented as a minimum value or range.
[5] N_{est} is based on the count of individuals identified from photo-ID catalogs in the analysis of a subset of data from 1958 to 2018.
[6] Abundance estimates are greater than 8 years old, so stock abundance is considered unknown in the most recent SAR. However, Pearson *et al.* (2024) report the peak abundance estimate as 15,898.
[7] Nest is the best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the State Parks' construction activities have the potential to result in harassment of marine mammals in North Puget Sound, WA. We refer to the proposed rule (91 FR 51884) for a full discussion of the effects of anthropogenic noise on marine mammals in general and the potential effects of the specified activities on marine mammals and their habitat. There is no newly available relevant information that would change our analysis or the results thereof.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes that may be authorized under this final rule, which will inform both NMFS' consideration of small numbers and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA (16 U.S.C. 1362(18)) 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).

Authorized takes would primarily occur through Level B harassment, as acoustic sources (*i.e.*, pile-driving activities) can potentially disrupt behavioral patterns in individual marine mammals. There is also some potential for auditory injury (AUD INJ; Level A harassment) to occur for two species—the harbor porpoise and the harbor seal. The required mitigation and monitoring measures are expected to minimize the potential for take and, if take were to occur, the severity of the taking to the extent practicable. As

previously described, no mortality or serious injury is anticipated or authorized for these MFRP projects.

This final rule incorporates the harassment thresholds used in the proposed rule to estimate the manner and number of takes analyzed in this final rule and LOA. In summary, State Parks' proposed activity includes the use of continuous (vibratory pile driving and extraction, rock drilling) and impulsive (impact pile driving, DTH drilling) sources, and therefore the SPLrms thresholds of 120 and 160 dB re 1 µPa are applicable. NMFS also applied the Updated Acoustic Technical Guidance (NMFS, 2024) to determine the potential for Level A harassment, as described in the proposed rule. Additionally, this final rule includes the updated calculated Level A harassment and Level B harassment isopleths and ensonified areas (table 3).

Table 3 -- Updated calculated Level A harassment and Level B harassment isopleths (m) and ensonified areas (km^2)

Pile size/type	Level A harassment zone (m/km^2)					Level B harassment zone (m/km^2) (all hearing groups)
	LFC	HFC	VHFC	Phocids	Otariids	
Reid Harbor						
Vib removal 14" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.79]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [1.39]
Impact 16" steel	191 [0.06]	24 [0.00]	295 [0.15]	169 [0.05]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel[a]	**177 {108} [0.03]**	**23 {42} [0.01]**	**271 {88} [0.02]**	**157 {139} [0.04]**	**58 {47} [0.00]**	15,849 [2.53]
Prevost Harbor						
Vib removal 14" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.89]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [3.79]
Impact 16" steel	191 [0.07]	24 [0.00]	295 [0.14]	169 [0.06]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel[a]	**177 {108} [0.03]**	**23 {42} [0.01]**	**271 {88} [0.02]**	**157 {139} [0.04]**	**58 {47} [0.00]**	15,849 [4.85]
Fossil Bay						
Vib removal 16" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.71]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [9.58]
Impact 16" steel	191 [0.09]	24 [0.00]	295 [0.15]	169 [0.07]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel[a]	**177 {108} [0.03]**	**23 {42} [0.01]**	**271 {88} [0.02]**	**157 {139} [0.04]**	**58 {47} [0.00]**	15,849 [4.85]
Olga Pier						
Vib removal 16" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [2.46]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [21.24]

Impact 16" steel	191 [0.08]	24 [0.00]	295 [0.16]	169 [0.06]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel[a]	**177 {108} [0.03]**	**23 {42} [0.01]**	**271 {88} [0.02]**	**157 {139} [0.04]**	**58 {47} [0.00]**	15,849 [4.85]
Bowman Bay						
Vib removal 12" (18" proxy) timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [1.06]
Rosario Pier						
Vib removal 14" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [1.36]

Note: For all Level A harassment isopleths <10 m, a 10 m physical interaction radius has been applied. Standard rounding has been applied. The ensonified area (km^2) is in brackets.
a – Updated Level A harassment zones in bold, with the original Level A harassment zone distance from the proposed rule in curly braces.

Take Estimation

The proposed rule (91 FR 51884) included a detailed description of the methodology State Parks used to estimate exposures from the specified activities. We summarize that information here.

The number of marine mammals that may be exposed to noise exceeding harassment thresholds was determined by calculating the ensonified area for each source, pile type, and pile size within each marine mammal hearing group at each of the six project locations.

The potential for Level A harassment and Level B harassment exposures was calculated by using the following equation:

Exposure estimate = density x ensonified area (km^2) x days of pile removal/installation (per activity and at each location)

Standard rounding was applied at the end to all calculations.

As shown in table 4, State Parks calculated exposure estimates for Level A harassment and Level B harassment for all 10 species for each year of the MFRP, and NMFS agrees with these estimates. Not all animals passing through any of the six project areas are expected to be exposed to noise levels equivalent to Level A harassment or Level B harassment. When considering species density within the San Juan Islands and Deception Pass, multiplied by the Level A harassment ensonified area, and further multiplied by the number of in-water days for each potential pile driving or removal

activity at each site, the calculated Level A harassment exposures were determined to be zero for all species except the harbor porpoise (four Level A harassment exposures calculated across all 5 years), which has the highest density of any species that are likely to occur in any of the project areas. Level B harassment exposures were similarly calculated for all 10 species and are included in table 4.

Table 4 -- Calculated Level A harassment and Level B harassment exposure estimates by species and by year

Common name	Stock	Calculated Level A Harassment Exposures					Calculated Level B Harassment Exposures				
		Yr 1	Yr 2	Yrs 3 or 4[1]	Yr 5	Total	Yr 1	Yr 2	Yrs 3 or 4[1]	Yr 5	Total
Minke whale	Eastern N. Pacific	0	0	0	0	0	0	2	0	4	6
Gray whale	Eastern N. Pacific	0	0	0	0	0	0	2	0	3	5
Killer whale	Transient	0	0	0	0	0	0	1	0	1	2
Pacific white-sided dolphin	CA/OR/WA	0	0	0	0	0	4	29	0	33	66
Dall's porpoise	CA/OR/WA	0	0	0	0	0	3	21	0	25	49
Harbor porpoise	WA Inland Waters	1	2	0	1	4	79	525	6	620	1,230
Northern elephant seal	California Breeding	0	0	0	0	0	0	1	0	1	2
Harbor seal	WA Northern Inland Waters	0	0	0	0	0	29	187	3	219	438
Steller sea lion	Eastern U.S.	0	0	0	0	0	0	0	0	1	1
California sea lion	U.S.	0	0	0	0	0	0	6	0	8	14

[1]Because the timing of construction is uncertain, estimated exposures would occur either during Years 3 or 4 of the project.

Using the calculated Level A harassment and Level B harassment exposure estimates as a basis (table 4), State Parks then considered animal size, species frequency, and likelihood of occurrence in the project areas and the monitoring zones for each project location. Additionally, State Parks considered the proximity of pinniped haulouts to certain sites, the potential for large group sizes of certain species, and the cryptic nature of both harbor porpoises and harbor seals, which affects their detectability. Based on these factors, State Parks modified its take requests for most species in most MFRP years. For example, State Parks increased its request for Level A harassment takes for harbor porpoises and added a request for Level A harassment takes for harbor seals, although it originally calculated no takes for harbor seals (table 5). State Parks also considered the aforementioned factors and, for all species except minke whales and gray whales, increased its request for Level B harassment takes (table 5).

Based on the best available science, NMFS finds that State Parks' estimates of the types and amounts of take for each species and each project site are a reasonable representation of the amount of take that could occur from the six projects. Table 6 below summarizes the number of authorized takes by Level A harassment and/or Level B harassment, and the maximum annual authorized takes as a percentage of stock abundance.

Table 5 -- Authorized incidental takes by Level A harassment and Level B harassment by species and by year

Common name	Stock	Level A Harassment Authorized Takes					Level B Harassment Authorized Takes				
		Yr 1	Yr 2	Yrs 3 or 4[1]	Yr 5	Total	Yr 1	Yr 2	Yrs 3 or 4[1]	Yr 5	Total
Minke whale	Eastern N. Pacific	0	0	0	0	0	0	2	0	4	6
Gray whale	Eastern N. Pacific	0	0	0	0	0	0	2	0	3	5
Killer whale	Transient	0	0	0	0	0	0	30	0	30	60
Pacific white-sided dolphin	CA/OR/WA	0	0	0	0	0	20	50	0	50	120
Dall's porpoise	CA/OR/WA	0	0	0	0	0	20	50	0	50	120
Harbor porpoise	WA Inland Waters	5	10	0	10	25	250	550	10	650	1,460
Northern elephant seal	California Breeding	0	0	0	0	0	20	5	5	5	35
Harbor seal	WA Northern Inland Waters	5	10	0	5	20	150	250	10	300	710
Steller sea lion	Eastern U.S.	0	0	0	0	0	0	0	0	10	10
California sea lion	U.S.	0	0	0	0	0	10	10	0	15	35

[1] Because the timing of construction is uncertain, estimated exposures would occur either during Years 3 or 4 of the project.

Table 6 -- Total authorized incidental takes by Level A harassment and Level B harassment for the 5-year effective period of this LOA, and as a maximum annual percentage of stock abundance

Species	Stock	Total Level A Harassment Takes	Total Level B Harassment Takes	Total Level A + Level B Harassment Takes	Maximum Annual Percent of Stock Abundance
Minke whale	Eastern N. Pacific	0	6	6	0.00
Gray whale	Eastern N. Pacific	0	5	5	0.00
Killer whale	Transient	0	60	60	0.09
Pacific white-sided dolphin	CA/OR/WA	0	120	120	0.00
Dall's porpoise	CA/OR/WA	0	120	120	0.00
Harbor porpoise	WA Inland Waters	25	1,460	1,485	0.06
Northern elephant seal	California Breeding	0	35	35	0.00
Harbor seal	WA Northern Inland Waters	20	710	730	0.02
Steller sea lion	Eastern U.S.	0	10	10	0.00
California sea lion	U.S.	0	35	35	0.00

Mitigation

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (the latter is not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and the manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts on marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure would be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

This final rule incorporates all mitigation measures contained within the proposed rule without change. We refer the reader to the proposed rule (91 FR 51884) on those measures and the expected benefit to marine mammals. In summary, the mitigation measures in this final rule include soft starts and bubble curtain use during impact pile driving, as well as standard shutdown zones to avoid physical interaction of marine mammals and construction equipment. State Parks will use NMFS-approved PSOs during all activities that have the potential to result in take. As fully described in the proposed rule, NMFS has determined that the mitigation measures proposed by State Parks and contained within this final rule result in the least practicable adverse impact on marine mammals.

Establishment of Shutdown Zones

State Parks will establish shutdown zones with radial distances as identified in table 7 for all in-water construction activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon

sighting of a marine mammal (or in anticipation of an animal entering the defined area) to minimize potential instances of AUD INJ and more severe behavioral disturbances by delaying the start of an activity if marine mammals are near the activity.

If a marine mammal is observed entering or within the shutdown zones indicated in table 7, pile driving activity must be delayed or halted. 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 left the area and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

Pile-driving supervisors and crews, PSOs, and relevant State Parks staff must avoid direct physical interaction with marine mammals during construction activities. If a marine mammal comes within 10 m 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.

Based on the revised NMFS User Spreadsheet inputs (see **Changes from the Proposed Rule to Final Rule**), table 7 lists the updated shutdown zones and Level B harassment zones (denoted in bold and in the footnote) as follows:

Table 7 -- Updated shutdown zones and Level B harassment zones

Site, Activity, Pile Size/Type	Minimum Shutdown Zones (m)					Level B Harassment Zones (m) (all hearing groups)
	LFC Minke, Gray	**HFC** Transient, PWSD	**VHFC** Dall's, Harbor porpoise	**PW** NOES, Harbor seal	**OW** Steller, CASL	
Reid Harbor						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel[a]	**180**	**30**	**280**	**160**	**60**	15,850
Prevost Harbor						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel[a]	**180**	**30**	**280**	**160**	**60**	15,850
Fossil Bay						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel[a]	**180**	**30**	**280**	**160**	**60**	15,850
Olga Pier						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel[a]	**180**	**30**	**280**	**160**	**60**	15,850
Bowman Bay						
Vib removal 12" timber	10	10	10	10	10	1,590
Rosario Pier						
Vib removal 14" timber	10	10	10	10	10	1,590

Note: LFC = low-frequency cetacean; HFC = high-frequency cetacean; VHFC = very high-frequency cetacean; PW = phocid (in-water); OW = otariid (in-water); Transient = Transient killer whale; PWSD = Pacific white-sided dolphin; NOES = Northern elephant seal; CASL = California sea lion.
a – Updated shutdown zones in bold. (No changes from the proposed rule have been made to Level B harassment zones.)

Pre- and Post-Activity Marine Mammal Monitoring

State Parks will employ PSOs and establish monitoring locations as described in the Monitoring Plans and LOA. Monitoring of pile-driving activities (conducted only during daylight hours) will take place from 30 minutes prior to the initiation of pile-

driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile-driving activity. Additionally, monitoring will be conducted for 30 minutes whenever a break in the specified activity (*i.e.*, vibratory pile driving/removal, impact pile driving, rock drilling, or DTH drilling) occurs for 30 minutes or longer. Pre-start clearance monitoring will be conducted during periods of sufficient visibility for the lead PSO to determine that the shutdown zones indicated in table 7 are clear of marine mammals.

Soft Start

State Parks will use soft-start techniques when using 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 sets of reduced energy strikes. A soft start will be implemented at the start of each day's impact pile driving and at any time after it ceases for 30 minutes or longer. Soft-start procedures provide additional protection for marine mammals by giving them a warning and/or a chance to leave the area before the hammer operates at full capacity.

Noise Attenuation System

State Parks 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 bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column; 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. In addition, airflow to the bubblers must be balanced around the pile's circumference.

In summary, NMFS has determined that the mitigation measures contained within this final rule will provide the means of effecting the least practicable impact on the

affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) require that requests for authorizations include the suggested means of accomplishing the necessary monitoring and reporting that result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to both compliance and ensuring the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise), (2) affected species (*e.g.*, life history, dive patterns), (3) co-occurrence of marine mammal species with the activity, or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals or (2) populations, species, or stocks;

- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

State Parks will abide by all monitoring and reporting measures contained within this final rule and LOA and a NMFS-approved Marine Mammal Monitoring and Mitigation Plan (Monitoring Plan). This final rule incorporates all monitoring measures contained within the proposed rule (91 FR 51884), without change. We refer the reader to the proposed rule for details regarding those measures.

In summary, State Parks will use PSOs at least 30 minutes prior to, during, and 30 minutes after all activities that may result in take of marine mammals. Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

- PSOs must be independent from State Parks and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA or letter of concurrence;
- Other PSOs may substitute relevant experience, education (a degree in biological science or a related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to an ITA issued by NMFS;
- 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 an ITA or Letter of Concurrence issued by NMFS; and

- PSOs must be approved by NMFS prior to beginning any activity subject to the LOA.

State Parks will establish monitoring locations as described in State Parks' Monitoring Plan (see Appendix C of State Parks' application and the monitoring plans for each of the six project locations), in accordance with the following conditions:

- For all pile-driving activities, a minimum of one PSO must be assigned to each active vibratory pile removal and impact pile-driving location to monitor the shutdown zones;
- Three PSOs must be assigned to each active vibratory pile-driving location;
- Four PSOs must be assigned to each active rock drilling and DTH drilling location;
- PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in any issued LOA; and
- PSOs must contact the Orca Network by phone or via social media (*e.g.*, its Facebook page) before any pile-driving activities to receive a daily update on killer whale and large cetacean sightings.

Reporting

This final rule incorporates all reporting measures contained within the proposed rule (91 FR 51884) without change. State Parks must submit an annual draft summary report on all construction activities and marine mammal monitoring results to NMFS within 90 calendar days following the end of monitoring for all in-water construction, or 90 calendar days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. The draft comprehensive 5-year summary report must also be submitted to NMFS within 90 calendar days of the end of Year 5 of the project. The reports must detail the

monitoring protocol and summarize the data recorded during monitoring, including an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include at a minimum:

- Dates and times (beginning and end) of all marine mammal monitoring;
- Activities occurring during each daily observation period, including: (a) the number and type of piles that were driven or removed and the method (*i.e.*, impact, vibratory, rock drilling, and DTH drilling) and (b) the total duration of driving time for each pile and/or number of strikes for each pile;
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at the 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.

Upon observation of a marine mammal, the following minimum information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;
- Time of the sighting;
- 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;
- Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;
- Estimated number of animals (min/max/best estimate);

- Estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition);
- Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);
- 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);
- Number of marine mammals detected within the estimated harassment zones, by species; and
- Summary information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in the behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days after the submission of the draft report, the draft report will constitute the final report. If State Parks receives comments from NMFS, a final report addressing NMFS' comments must be submitted within 30 days after receipt of the comments. The reports must contain the data as specified in the issued LOA.

Reporting Injured or Dead Marine Mammals

As described in the proposed rule (91 FR 51884), in the event that personnel involved in State Parks' activities discover an injured or dead marine mammal, State Parks must report the incident to the NMFS Office of Protected Resources and to the NMFS West Coast regional stranding network as soon as feasible. If the specified activity clearly caused the death or injury, State Parks must immediately cease the specified activities until NMFS is able to review the circumstances of the incident. State Parks

must not resume their activities until notified by NMFS. The report must include the information contained within the final rule and the LOA:

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

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual recruitment or survival rates (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information upon which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the

species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As described in the proposed rule (91 FR 51884), several key factors help assess whether potential impacts associated with a specified activity should be considered negligible. These include, but are not limited to, the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the species or stock, and the status of the species or stock.

As described in the **Changes from the Proposed Rule to Final Rule** section and the **Mitigation** section of this final rule, NMFS identified a minor adjustment to a proxy source level assumption and methodology that resulted in small increases (and one decrease) to the Level A harassment zones and shutdown zones. However, there was no associated change to the proposed amount of take by Level A harassment for any species anticipated to occur incidentally to the specified activities. Given these limited, minor adjustments, NMFS has determined that this new information does not change any of the preliminary analyses, conclusions, or determinations in the proposed rule. Therefore, the preliminary analyses, conclusions, and determinations included in the proposed rule for all species and stocks are considered final. The expected effects of the taking allowed for in this final rule, the primary factors considered, and those findings are described below.

Pile driving associated with State Parks' MFRP, as outlined previously, has the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take in the form of Level B harassment and, for harbor porpoises and harbor seals, Level A harassment, from underwater pile-driving sounds. Potential takes could occur if marine mammals are present in zones ensonified above the thresholds for Level A harassment or Level B harassment, identified above, during these activities.

No serious injury or mortality is expected over the 5-year LOA period, even without required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for 8 of the 10 marine mammal species due to the rarity of the species near the project area and/or the application of mitigation measures, such as shutdown zones that encompass the Level A harassment zones for these species (see **Mitigation** section).

Level A harassment takes have been authorized for two species (harbor porpoise and harbor seal) that may occur in the project area. These takes account for the possibility that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for long enough to be taken by Level A harassment. Additionally, in some cases, the authorized Level A harassment takes would account for the possibility that an animal could enter a shutdown zone without detection, given the various obstructions along the shoreline, and remain in the Level A harassment zone long enough to be taken by Level A harassment before being observed and a shutdown occurring. That said, any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving, not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity). Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here to incur any more than a small degree of AUD INJ.

Additionally, the amount of take authorized by Level A harassment is low. As stated above, for 8 of the 10 marine mammal species, NMFS anticipates no take by Level A harassment over the duration of State Parks' planned activities; NMFS expects no more than 25 takes by Level A harassment for the harbor porpoise and 20 takes by Level A harassment for harbor seals. However, in both species, if hearing impairment occurs, the affected animal is most likely to lose only a few dB in hearing sensitivity. Because

the anticipated degree is small, any AUD INJ potentially incurred would not be expected to affect the reproductive success or survival of any individual, much less result in adverse impacts on the species or stock.

Additionally, some individuals that are behaviorally harassed could also simultaneously incur some small degree of temporary threshold shift (TTS) for a short duration of time. However, because the hearing sensitivity of those that incur TTS is expected to fully recover within minutes to hours, the brief hearing impairment is unlikely to affect their long-term ability to forage and communicate with conspecifics. Therefore, it is unlikely to affect the reproduction or survival of any marine mammal nor the recruitment or survival rates of the species or stock.

Effects on individuals taken by Level B harassment in the form of behavioral disruption are expected to be mild, short-term, and temporary. Based on reports in the literature and monitoring of similar activities, effects would likely be limited to reactions such as avoidance, increased swimming speeds, increased surface time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006). Most likely, individuals would move away from the sound source and temporarily avoid the area where pile driving is occurring. We expect that any avoidance of the project areas by marine mammals will be temporary and that any marine mammals that avoid the project areas during construction will not be permanently displaced. Short-term avoidance of the project areas and the energetic impacts of interrupted foraging or other important behaviors are unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals are not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The mitigation measures minimize the potential for harassment. During all impact driving, soft-start procedures and monitoring of established shutdown zones are required, significantly reducing the possibility of injury. Given sufficient notice through soft start

(for impact driving), marine mammals are expected to move away from an irritating sound source before it becomes potentially injurious. To reduce in-water noise, vibratory pile driving would be the primary installation method for the project, and impact hammers would be used only to seat pile tips into fractured bedrock ahead of hammering or drilling operations or if the material is too dense to penetrate with a vibratory hammer.

The project is also not expected to have significant adverse effects on affected marine mammal habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column, and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

A biologically important area for feeding gray whales overlaps with the project area, but it is active from February to June (Calambokidis *et al.*, 2024) and overlaps only minimally with the planned annual project periods. This indicates that the projects' impact on gray whales would be minimal or nonexistent and therefore would not affect their reproduction or survival.

Finally, minor noise effects in small, localized areas of habitat are unlikely to significantly affect the reproduction or survival of individual animals, let alone the annual recruitment or survival rates of these species or stocks. Taken together, we believe that these factors, along with available evidence from similar activities, indicate that the potential effects of the specified activities would be only minor and short-term for individuals. The specified activities are not expected to impact recruitment or survival rates and therefore will not cause population-level impacts.

In summary, as discussed above, the following factors support our negligible impact determinations that the impacts from these MFRP activities are unlikely to adversely affect any species or stocks through effects on annual recruitment or survival rates:

- No take by mortality or serious injury is anticipated or authorized;
- No take by Level A harassment is anticipated or authorized for 8 of the 10 species;
- Take by Level A harassment for two species is expected to be very small amounts and be of low severity;
- Take by Level B harassment is expected to be primarily in the form of behavioral disturbance, leading to avoidance of the project areas around where pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints affecting their populations;
- There is a lack of anticipated significant or long-term negative effects on marine mammal habitat;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term, and, therefore, any associated impacts on marine mammal feeding are not likely to cause significant or long-term effects on individuals or lead to adverse impacts on their populations;
- The ensonified areas are small relative to the overall habitat ranges of all species and stocks and overlap with known areas of important habitat is minimal; and
- State Parks will implement mitigation measures, including soft starts, visual monitoring, bubble curtains, and shutdown zones, to minimize the number of marine mammals exposed to injurious levels of sound.

Based on the analysis contained herein of the likely effects of the specified MFRP activities on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers, so, in practice, when estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate abundance estimate for the relevant species or stock to determine whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, the analysis may consider other qualitative factors, such as the temporal or spatial scale of the activities.

As in the proposed rule, the maximum annual amount of take allowed under the final rule is less than one-third of the population abundance estimates for all stocks (see table 6). The number of animals authorized to be taken is small relative to the relevant species or stock abundances even if each estimated take occurred to a new individual, and even if all take accrued to a single stock.

Because there is no substantive change to the small numbers analysis described in the proposed rule, it is incorporated herein. Based on the analysis contained herein of the MFRP activities (including the mitigation and monitoring measures) and the anticipated

take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to the State Parks' construction activities contain an adaptive management component. The reporting requirements associated with this final rule are designed to provide NMFS with monitoring data from completed projects to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the State Parks regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issued pursuant to these regulations.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq*.) requires that each Federal agency ensure 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 when issuing incidental take authorizations, NMFS consults internally whenever we propose to authorize the take of ESA-listed species.

No incidental take of ESA-listed species is authorized or expected to result from the MFRP activities, nor will the action destroy or adversely modify any designated critical habitat. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for 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 evaluate the proposed action (*i.e.*, promulgation of regulations and subsequent issuance of a 5-year LOA) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (ITAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 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 determined that issuance of the final rule and LOA qualifies to be categorically excluded from further NEPA review.

Promulgation

As a result of these determinations, NMFS is promulgating these regulations that (1) allow for take of 10 marine mammal species, comprising 10 stocks, by Level A harassment and/or Level B harassment, incidental to construction activities associated with the State Parks' MFRP project for a 5-year period from the LOA issuance date through September 30, 2031, and (2) prescribe mitigation, monitoring, and reporting measures.

Classification

Executive Order 12866

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Executive Order 14192

This rule is considered an Executive Order 14192 deregulatory action.

Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA (5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. State Parks is a state governmental program focused on improving state parks throughout Washington. State Parks is the only entity subject to the requirements in the proposed rule, and State Parks is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA, because it is a department of the state government. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act (PRA)

This final rule contains a collection-of-information requirement subject to the provisions of the PRA. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648-0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Reporting and recordkeeping requirements, Wildlife.

Dated: November 12, 2026

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq*., unless otherwise noted.

2. Add subpart AAA, consisting of §§ 217.520 through 217.528, to read as follows:

Subpart AAA – Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

Sec.

217.520 Specified activity and specified geographical region.

217.521 Effective dates.
217.522 Permissible methods of taking.
217.523 Prohibitions.
217.524 Mitigation requirements.
217.525 Requirements for monitoring and reporting.
217.526 Letters of Authorization.
217.527 Renewals and Modifications of Letters of Authorization.
217.528 [Reserved]

Subpart AAA – Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

§ 217.520 Specified activity and specified geographical region.

(a) The incidental taking of marine mammals by the Washington State Parks and Recreation Commission's (State Parks) Marine Facilities Replacement Program (MFRP) may be authorized in a letter of authorization (LOA) only if it occurs at or around the specified State parks in North Puget Sound, WA, including Stuart Island Marine State Park, Sucia Island Marine State Park, Deception Pass State Park, and Olga State Park, incidental to the specified activities outlined in paragraph (b) of this section. Requirements imposed on State Parks in this subpart must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified activities are in-water construction activities associated with the MFRP at six marine facilities at four State parks in North Puget Sound, WA.

§ 217.521 Effective dates.

Effective from November 17, 2026 through November 17, 2031.

§ 217.522 Permissible methods of taking.

Under an LOA issued pursuant to § 216.106 of this chapter, State Parks and those persons it authorizes or funds to conduct activities on its behalf may incidentally, but not intentionally, take marine mammals within the specified geographical region by harassment associated with the specified activities, provided the activity is in compliance

with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.523 Prohibitions.

(a) Except for the takings permitted in § 217.522 and authorized by an LOA issued under § 216.106 of this chapter, it is unlawful for any person to do any of the following in connection with the specified activities:

(1) Violate or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under this subpart;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

§ 217.524 Mitigation requirements.

(a) When conducting the specified activities identified in § 217.520(b), the mitigation measures contained in this section and any LOA issued under this subpart must be implemented.

(1) A copy of any issued LOA must be in the possession of State Parks, its designees, and work crew personnel operating under the authority of this LOA.

(2) State Parks must ensure that construction supervisors and crews, the monitoring team, and relevant State Parks staff are trained prior to the start of activities

subject to the LOA, 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.

(3) State Parks must employ Protected Species Observers (PSOs) and establish monitoring locations as described in any issued LOA and the relevant Marine Mammal Monitoring Plan (Monitoring Plan). State Parks must monitor the project area to the maximum extent possible based on the required number of PSOs, the required monitoring locations, and environmental conditions.

(4) 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.

(5) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in the LOA 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.

(6) If a marine mammal is observed entering or within the shutdown zones indicated in the LOA, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in any issued LOA.

(7) 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 the LOA or 15 minutes have passed without re-detection of the animal.

(8) State Parks 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 sets of reduced energy strikes. 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.

(9) State Parks must use a bubble curtain during impact pile driving. The bubble curtain must be operated as necessary to achieve optimal performance. At a minimum, State Parks 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.

(10) Pile driving activity must be halted (as described in any issued LOA) 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 the LOA).

(11) State Parks, construction supervisors and crews, PSOs, and relevant State Parks 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.

(b) [Reserved]

§ 217.525 Requirements for monitoring and reporting.

(a) State Parks must submit a Monitoring Plan to NMFS for approval at least 90 calendar days before the start of construction and abide by the Plan, if approved.

(b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(1) PSOs must be independent from State Parks and have no other assigned tasks during monitoring duties.

(2) 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 or letter of concurrence.

(3) Other PSOs may substitute relevant experience, education (a degree in biological science or a related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to an incidental take authorization issued by NMFS.

(4) 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 an incidental take authorization or Letter of Concurrence issued by NMFS.

(5) PSOs must be approved by NMFS prior to beginning any activity subject to the LOA.

(c) State Parks must establish monitoring locations as described in the Monitoring Plan. For all pile-driving activities, a minimum of one PSO must be assigned to each active vibratory pile removal and impact pile-driving location to monitor the shutdown zones; three PSOs must be assigned to each active vibratory pile-driving location; and four PSOs must be assigned to each active rock drilling and DTH drilling location.

(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 any issued LOA.

(e) PSOs must contact the Orca Network before any pile-driving activities to get a daily update on the latest killer whale and large cetacean sightings.

(f) State Parks must submit a draft annual summary monitoring report on all monitoring conducted during each project year within 90 calendar days of the completion of marine mammal monitoring, or 90 calendar days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 calendar days of the end of Year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring, including an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include at a minimum:

(1) Dates and times (beginning and end) of all marine mammal monitoring;

(2) Activities occurring during each daily observation period, including:

(i) the number and type of piles that were driven or removed and the method (*i.e.*, impact, vibratory, rock drilling, and DTH drilling); and

(ii) the total duration of driving time for each pile and/or number of strikes for each pile;

(3) PSO locations during marine mammal monitoring; and

(4) Environmental conditions during monitoring periods (at the 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.

(g) Upon observation of a marine mammal, the following minimum information must be reported:

(1) Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;

(2) Time of the sighting;

(3) 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;

(4) Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;

(5) Estimated number of animals (min/max/best estimate);

(6) Estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition);

(7) Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);

(8) 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);

(9) Number of marine mammals detected within the estimated harassment zones, by species; and

(10) Summary information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in the behavior of the animal(s), if any.

(h) If no comments are received from NMFS within 30 calendar days after submission of the draft summary report, the draft report will constitute the final report. If State Parks receives comments from NMFS, a final summary report addressing NMFS'

comments must be submitted within 30 calendar days after receipt of the comments. The reports must contain the data as specified in the issued LOA.

(i) State Parks 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).

(j) Reporting injured or dead marine mammals:

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

(2) The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location 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.

§ 217.526 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, State Parks must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the effective dates of this subpart.

(c) If an LOA expires prior to the end of the effective dates of this subpart, State Parks may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, State Parks must apply for and obtain a modification of the LOA as described in § 217.527.

(e) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.527 Renewals and Modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.526 for the specified activities may be renewed or modified upon request by State Parks, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA were implemented.

(b) For LOA modification or renewal requests by State Parks that include changes to the activities or the mitigation, monitoring, or reporting measures that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.526 for the specified activities may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures, after consulting with State Parks regarding the practicability of the modifications, if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures set forth in the preamble of these regulations;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include, but are not limited to:

(A) Results from State Parks' monitoring;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by this subpart or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in an LOA issued pursuant to § 216.106 of this chapter and § 217.526, an LOA may be modified without

prior notice or opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

§ 217.528 [Reserved]

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