

purposes as no relevant subsistence uses of marine mammals are implicated by this action; and, (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

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

NMFS Office of Protected Resources has proposed to authorize the incidental take of four species of marine mammals which are listed under the ESA (the North Atlantic right, fin, sei, and sperm whale) and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The proposed renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or present any other basis to require re-initiation of consultation with NMFS GARFO; therefore, the ESA consultation has been satisfied for the initial IHA and remains valid for the renewal IHA.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to SouthCoast Wind for conducting HRG surveys off the coast of Massachusetts and Rhode Island until May 11, 2025, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: September 16, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE272]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Washington State Department of Transportation's Seattle Slip 3 Vehicle Transfer Span Project in Washington State

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Washington State Department of Transportation (WSDOT) to incidentally harass marine mammals during construction activities associated with the Seattle Slip 3 Vehicle Transfer Span (VTS) Replacement Project in Seattle, Washington.

DATES: This authorization is effective from September 12, 2024 through September 11, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

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

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, 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). Further, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as "mitigation measures"). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as "take," "harassment," and "negligible impact" can be found in the MMPA and NMFS's implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103). The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On December 19, 2023, NMFS received a request from WSDOT for an IHA to take marine mammals incidental to Seattle Slip 3 VTS Replacement Project in Elliott Bay of the Puget Sound, Seattle, WA. Following NMFS' review of the application, WSDOT submitted revised versions on March 4, April 8, April 18, and April 29, 2024. A final revised monitoring plan was submitted on May 14, 2024 and a final revised application was submitted on May 16, 2024. The application was deemed adequate and complete on May 20, 2024. WSDOT's request is for take of 12 species of marine mammals, by Level B harassment only. The proposed IHA was published for public comment on July 30, 2024 (89 FR 61064). Neither WSDOT nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity and Anticipated Impacts

Overview

WSDOT plans to replace the Seattle Slip 3 VTS at Colman Dock which is located in Elliott Bay of the Puget Sound in Seattle, Washington. The purpose of the construction project is to preserve the transportation function of an aging, seismically deficient transfer span. The existing VTS will be removed and replaced with a hydraulic transfer span consisting of steel drilled shafts and a new steel wingwall. In-water construction includes cutting sheet piles, installation and removal of steel piles with a vibratory hammer, and proofing steel piles with an impact hammer to drive them to the maximum depth and ensure load bearing capacity. In-water pile removal and driving with vibratory and impact hammers may result in incidental take by Level B harassment of 12 marine mammal species within Elliott Bay and the Central Puget Sound.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (89 FR 61064, July 30, 2024). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to WSDOT was published in the **Federal Register** on July, 30 2024 (89 FR 61064). That notice described, in detail, WSDOT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analysis, the proposed authorization, and any other aspect of the notice of the proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day public comment period, NMFS received a total of three public comment letters. Two of these were from Federal agencies stating simply that they had no comments, and the other comment letter was from a private citizen.

The only substantive comment and NMFS' response is provided below, and all public comment letters are available

online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-department-transportations-seattle-slip-3-vehicle>.

Comment: One commenter presented a suggestion regarding protected species observer (PSO) monitoring coverage from the Seattle-Bainbridge Island ferries during the vibratory installation of 24, 30, and 78-in steel pipe piles, stating that there are instances when only one Seattle-Bainbridge Island ferry is operating due to scheduling issues, insufficient staffing, or boat mechanical issues which necessitate additional PSO coverage at those times. The commenter suggested adding an alternate monitoring location for the second ferry based PSO if any of these operational issues occurred.

Response: NMFS agrees with the commenter's concern and added an alternate location for the second ferry based PSO to monitor from if there are delays or only one ferry is operational during the installation of the 24, 30 and 78-in pipe piles. NMFS refers the commenter to the Monitoring and Reporting section below and the Monitoring Requirements section of the final issued IHA.

Changes From the Proposed IHA to Final IHA

In the Monitoring and Reporting section of the proposed IHA **Federal Register** notice (89 FR 61064, July 30, 2024) one PSO was required to be stationed on each Seattle-Bainbridge Island ferry during the vibratory installation of 24, 30, and 78-in steel pipe piles. An alternate monitoring location for the second ferry stationed PSO was added to the Monitoring and Reporting section of this notice for instances when there are ferry delays or only one ferry is operational. Figure 2 was added as a spatial reference for the alternate monitoring location. These changes have also been added to the Monitoring Requirements section of the final issued IHA.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of

reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs); <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected and authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (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' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. For some species, this geographic area or surveys may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in table 1 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 1—MARINE MAMMAL SPECIES¹ LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	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—Cetacea—Mysticeti (baleen whales)						
<i>Family Eschrichtiidae:</i>						
Gray whale	<i>Eschrichtius robustus</i>	Eastern N Pacific	- , - , N	26,960 (0.05, 25,849, 2016) ..	801	131
Minke whale	<i>Balaenoptera acutorostrata</i>	CA/OR/WA	- , - , N	915 (0.792, 509, 2018)	4.1	0.19
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i>						
Killer whale ⁵	<i>Orcinus orca</i>	West Coast Transient	- , - , N	349 (N/A, 349, 2018)	3.5	0.4
Bottlenose dolphin	<i>Tursiops truncatus</i>	CA/OR/WA offshore	- , - , N	3,477 (0.696, 2,048, 2018)	19.70	≥0.82
Long beaked common dolphin.	<i>Delphinus capensis</i>	CA	- , - , N	83,379 (0.216, 69,636, 2018)	668	≥29.7
Pacific white-sided Dol- phin.	<i>Lagenorhynchus obliquidens</i>	CA/OR/WA	- , - , N	34,999 (0.222, 29,090, 2018)	279	7
<i>Family Phocoenidae (por- poises):</i>						
Dall's porpoise	<i>Phocoenoides dalli</i>	CA/OR/WA	- , - , N	16,498 (0.61, 10,286, 2018) ..	99	≥0.66
Harbor porpoise	<i>Phocoena phocoena</i>	Washington Inland Waters	- , - , N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i>						
CA sea lion	<i>Zalophus californianus</i>	U.S.	- , - , N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller sea lion ⁶	<i>Eumetopias jubatus</i>	Eastern	- , - , N	36,308 (N/A, 36,308, 2022) ...	2,178	93.2
<i>Family Phocidae (earless seals):</i>						
Harbor seal	<i>Phoca vitulina</i>	Washington Northern Inland Waters.	- , - , N	16,451 (0.07, 15,462, 2019) ..	928	40
Northern elephant seal ⁷ ..	<i>Mirounga angustirostris</i>	CA Breeding	- , - , N	187,386 (N/A, 85,369, 2013)	5,122	13.7

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 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 which 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 coefficient of variation; Nmin is the minimum estimate of stock abundance.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ Nest is based upon count of individuals identified from photo-ID catalogs in analysis of a subset of data from 1958–2018.

⁶ Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

⁷ There is uncertainty in available population estimates due to limited surveys, limited reproductive data, and uncertainty in stock relationships and harvest statistics.

As indicated above, all 12 species in table 1 spatially and temporally co-occur with the activity to the degree that take is reasonably likely to occur. A detailed description of the species likely to be affected by WSDOT's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 61064, July 30, 2024); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the

approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (i.e., all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from WSDOT’s construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (89 FR 61064, July 30, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from WSDOT’s construction activity on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 61064, July 30, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform 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 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 may occur by Level B harassment only, in the form behavioral reactions and temporary threshold shift (TTS) for individual marine mammals resulting from exposure to noise from impact and vibratory pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (i.e., shutdown

zones at the Level A harassment area) discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably like to occur and is authorized.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take numbers.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment). Acoustic thresholds used in the analysis were discussed in detail in the notice of proposed IHA (89 FR 61064, July 30, 2024) and not repeated here. Please see that notice for additional detail.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the construction project. Marine mammals are expected to be affected by sound generated from the impact and vibratory pile driving components of this project.

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles used in the project, NMFS used acoustic monitoring data from previous pile driving at WSDOT’s Bainbridge Island Ferry Terminal Project (vibratory removal of 12-inch H-piles), Phase 2 of Colman Dock construction for the Seattle Multimodal Project (impact installation of 24-inch steel piles), and the Ebey Slough Bridge Replacement Project (72-inch steel piles). Each of the projects listed above occurred within the Puget Sound and provided the most suitable source levels due to similar physical habitat characteristics, pile sizes, and pile driving or removal methods (table 3).

Source levels from the Bainbridge Terminal Ferry Project and the Ebey Slough Bridge Replacement Project were used as proxies for the vibratory removal of 14-inch steel H-piles and the vibratory installation of 24, 30, and 78-inch steel pipe piles for the project because source levels for identical pile sizes were unavailable. Results from the vibratory installation of 72-inch piles at the Ebey Slough Bridge Replacement Project showed that source levels ranged between 148 to 166 dB re 1 µPa at 10 m, therefore 174 dB re 1 µPa at 10 m, as proposed for use by WSDOT, was used as a conservative source level estimate for the vibratory installation of 24, 30, and 78-in steel pipe piles (WSDOT 2011). The source level for 14-inch H-piles was assumed to be

equivalent to the vibratory removal of 12-inch H-piles at the Bainbridge Island Ferry Terminal where the unweighted RMS SPL source level was 153 dB re 1 μPa at 10 m (Laughlin 2019). Bubble

curtains would be employed for impact installation of 24-inch steel piles but zero dB of effective attenuation is assumed because a bubble curtain was used at Phase 2 of Colman Dock

construction for the Seattle Multimodal Project, thus source levels would be the same.

TABLE 3—SEATTLE SLIP 3 VEHICLE TRANSFER SPAN PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile type and size (in)	Method	Source level at 10 m (dB re 1 μPA)	Reference
14-inch steel H-piles	Vibratory Removal	153 dB rms	Laughlin (2019).
24-inch steel pipe piles	Vibratory installation and removal	174 dB rms	WSDOT (2011).
24-inch steel pipe piles	Impact installation	166 SEL, 176 dB rms, 194 dB peak.	Greenbusch Group (2019).
30-inch steel sheet piles	Vibratory installation	174 dB rms	WSDOT (2011).
78-inch steel pipe piles	Vibratory installation	174 dB rms	WSDOT (2011).

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \text{Log}_{10} (R1/R2)$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This

value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the WSDOT's activities in the absence of specific modelling. The estimated Level B harassment zones for the WSDOT's activities are shown in tables 4 and 5.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional user spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this

optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile installation and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool (e.g., number of piles per day, during and/or strikes per pile) are presented in table 1 of the proposed IHA **Federal Register** notice (89 FR 61064; July 30, 2024), and the resulting estimated isopleths and ensonified areas are reported in tables 4 and 5 below.

TABLE 4—LEVEL A AND LEVEL B HARASSMENT ZONES

Pile size and type	Pile driving method	Level A harassment zone (m)					Level B harassment zone (m)
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otarids	
14-inch steel	Vibratory removal	3.2	0.3	4.7	1.9	0.1	1,585
24-inch steel	Vibratory installation and removal	65.8	5.8	97.3	40.0	2.8	^a 15,410
24-inch steel	Impact installation	75.9	2.7	90.4	40.6	3.0	736
30-inch steel	Vibratory installation	50.2	4.5	74.3	30.5	2.1	^a 15,410
78-in steel	Vibratory installation	50.2	4.5	74.3	30.5	2.1	^a 15,410

^a Land is reached at a maximum of 15,410 km/9.6 miles.

TABLE 5—LEVEL A AND LEVEL B ENSONIFIED AREAS

Pile size and type	Pile driving method	Level A ensonified area (m ²)					Level B harassment zone (m)
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otarids	
14-inch steel	Vibratory removal	8.0	0.07	17.4	2.8	0.007	3,247,392
24-inch steel	Vibratory installation and removal	4,524.5	5.7	6,418	1,294.6	7.07	75,844,286
24-inch steel	Impact installation	75.9	2.7	90.4	40.6	3.0	861,188
30-inch steel	Vibratory installation	1,979.2	15.9	4,336	730.6	3.5	75,844,286
78-inch steel	Vibratory Installation	1,979.2	15.9	4,336	730.6	3.5	75,844,286

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform take incidental to WSDOT's pile driving activities for the Seattle Slip 3 VTS Replacement Project. Throughout this section the pile installation or removal will be referred to as "pile driving" unless specified otherwise. From 2017 through 2021 WSDOT monitored for

marine mammals in Elliott Bay for the Seattle Multimodal Project. During this time, marine mammal monitoring occurred for 377 days. Since the Seattle Multimodal Project occurred in Elliott Bay, WSDOT considered this marine mammal monitoring data to be the most comprehensive and relevant for estimating take for the Seattle Slip 3 VTS Replacement Project. Therefore, this data compiled all of these monitoring results and calculated total sightings, average sightings per day, and maximum sightings per day for all

species of marine mammals that were observed (table 6). WSDOT used their best professional judgement and used this data to estimate take by multiplying maximum sighting per day by 19, which is the maximum number of in-water working days WSDOT estimates it would take to complete the project in a total worst case scenario.

NMFS has carefully evaluated these methods and concludes that it is an accurate and appropriate method for estimating take for WSDOT's activities for this project.

TABLE 6—MARINE MAMMALS SIGHTED AT THE SEATTLE MULTIMODAL PROJECT

Species	Total individuals sighted ^a	Average individuals sighted/day (377 days) ^a	Maximum individuals sighted in one-day ^a	Take requested
Harbor seal	2,271	6.0	32	Yes.
Northern elephant seal	1	0.003	1	Yes.
California sea lion	3,669	9.7	29	Yes.
Steller sea lion	112	0.3	10	Yes.
Unidentified pinniped	121	N/A	N/A	N/A.
Killer whale Southern resident	170	0.5	26	No.
Killer whale transient	79	0.2	20	Yes.
Gray whale	5	0.01	2	Yes.
Humpback whale	8	0.02	1	No.
Minke whale	3	0.008	1	Yes.
Unidentified large whale	2	N/A	1	N/A.
Unidentified small whale	10	N/A	N/A	N/A.
Harbor porpoise	655	1.7	72	Yes.
Dall's porpoise	8	0.02	5	Yes.
Common bottlenose dolphin	6	0.02	2	Yes.
Pacific white-sided dolphin	2	0.005	2	Yes.
Long-beaked common dolphin	0	N/A	0	Yes.
Unidentified dolphin/porpoise	46	N/A	6	N/A.

^a WSDOT 2022.

Gray Whale—Although gray whales are common on the southern ends of Whidbey and Camano Islands in the Puget Sound February through May, they are rarely sighted in the construction area (Calambokidis et. al. 2024). During the Seattle multimodal project only five gray whales were detected over 377 days of monitoring with a maximum of two individuals observed on a single day (WSDOT 2022). WSDOT estimated that up to 2 gray whales could be taken per day for the 19 days of construction, for a total of 38 takes by Level B harassment.

Since Seattle Slip 3 VTS Replacement Project construction would occur from August through mid-February, gray whales occurrence is expected to be relatively low. In this context, and given that gray whales are highly conspicuous, we have a high degree of confidence that WSDOT can successfully implement shutdowns as necessary to avoid any potential Level A harassment of gray whales. WSDOT must also monitor the Orca Network and the Whale Report Alert System

(WRAS) daily in order to maintain awareness of regional whale occurrence and movements (*see* Mitigation and Monitoring and Reporting sections below). Therefore, take of gray whales by Level A harassment is not anticipated or authorized.

Minke Whale—Minke whales are uncommon during fall and winter months in the Puget Sound but are rarely sighted in the construction area (Calambokidis and Baird 1994). During the Seattle Multimodal Project only three minke whale detections occurred over 377 days of monitoring with a maximum of one detection on a single day (WSDOT 2022). WSDOT estimated that up to 1 minke whale could be taken per day for the 19 days of construction, for a total of 19 takes by Level B harassment.

Since the Seattle Slip 3 VTS Replacement Project construction would occur from August through mid-February, minke whale occurrence is expected to be relatively low. In these circumstances, and given that minke whales are highly conspicuous, we have

a high degree of confidence that WSDOT can successfully implement shutdowns as necessary to avoid any potential Level A harassment of minke whales. WSDOT must also monitor the Orca Network and the WRAS daily in order to maintain awareness of regional whale occurrence and movements (*see* Mitigation and Monitoring and Reporting sections below). Therefore, take of minke whales by Level A harassment is not anticipated or authorized.

Transient Killer Whale—Transient killer whales are common in the Puget Sound in all months and a total of 79 transient killer whale detections occurred over 377 days of monitoring for the Seattle Multimodal Project with a maximum of 20 detections in a single day (Orca Network 2021, WSDOT 2022). WSDOT estimated that up to 20 incidents of take for transient killer whales could occur per day for 19 days of construction, for a total of 380 takes by Level B Harassment. Transient killer whales are common in the Puget Sound and are highly conspicuous.

The largest Level A harassment zone for mid-frequency cetaceans for all construction of the Seattle Slip 3 VTS Replacement Project is less than 6 m. It is highly unlikely that any cetacean would enter within 6 m of active pile driving, and no take by Level A harassment for any mid-frequency cetacean is expected to occur. WSDOT must also monitor the Orca Network and the WRAS daily in order to maintain awareness of regional whale occurrence and movements (see Mitigation and Monitoring and Reporting sections below). Therefore, take of transient killer whales by Level A harassment is not anticipated or authorized.

Bottlenose Dolphin—Bottlenose dolphins are considered to be rare in the Puget Sound but they were detected by the Cascadia Research Collective and reported via the Orca Network in 2017 (Cascadia Research Collective, 2017). They were also detected on six occasions with a maximum of two detections on a single day during the Seattle Multimodal Project (WSDOT 2022). WSDOT estimated that up to 2 bottlenose dolphins could be taken per day for the 19 days of construction, for a total of 38 takes by Level B harassment.

The largest Level A harassment zone for mid-frequency cetaceans for all construction of the Seattle Slip 3 VTS Replacement Project is less than 6 m. It is highly unlikely that any cetacean would enter within 6 m of active pile driving, and no take by Level A harassment for any mid-frequency cetacean is expected to occur. WSDOT must also monitor the Orca Network and the WRAS daily in order to maintain awareness of regional whale occurrence and movements (see Mitigation and Monitoring and Reporting sections below). Therefore, take of bottlenose dolphins by Level A harassment is not anticipated or authorized.

Long-Beaked Common Dolphin—No confirmed detections of long-beaked common dolphins occurred during the Seattle Multimodal Project but six unidentified delphinids were observed (WSDOT 2022). WSDOT assumed that up to two of these unidentified delphinids could have been long-beaked common dolphins. Therefore, WSDOT estimated that up to 2 long-beaked common dolphins could be taken per day for the 19 days of construction, for a total of 38 takes by Level B harassment.

The largest Level A harassment zone for mid-frequency cetaceans for all construction of the Seattle Slip 3 VTS Replacement Project is less than 6 m. It

is highly unlikely that any cetacean would enter within 6 m of active pile driving, and no take by Level A harassment for any mid-frequency cetacean is expected to occur. WSDOT must also monitor the Orca Network and the WRAS daily in order to maintain awareness of regional whale occurrence and movements (see Mitigation and Monitoring and Reporting sections below). Therefore, take of long-beaked common dolphins by Level A harassment is not anticipated or authorized.

Pacific White-Sided Dolphin—Pacific white-sided dolphins are rare in the Puget Sound but have been observed in San Juan Channel (Orca Network 2012). Two Pacific white sided dolphins were also observed during the Seattle Multimodal Project (WSDOT 2022). WSDOT estimated that up to 2 Pacific white-sided dolphins could be taken per day for the 19 days of construction, for a total of 38 takes by Level B harassment.

The largest Level A harassment zone for mid-frequency cetaceans for all construction of the Seattle Slip 3 VTS Replacement Project is less than 6 m. It is highly unlikely that any cetacean would enter within 6 m of active pile driving, and no take by Level A harassment for any mid-frequency cetacean is expected to occur. WSDOT must also monitor the Orca Network and the WRAS daily in order to maintain awareness of regional whale occurrence and movements (see Mitigation and Monitoring and Reporting sections below). Therefore, take of Pacific white-sided dolphins by Level A harassment is not anticipated or authorized.

Dall's Porpoise—Dall's porpoises are considered rare within the project area. WSDOT recorded only eight detections over 377 days of monitoring during the Seattle Multimodal Project (WSDOT 2022). WSDOT estimated that up to 5 Dall's porpoises could be taken per day for the 19 days of construction, for a total of 95 takes by Level B harassment.

The largest Level A harassment zone for high-frequency cetaceans for all construction of the Seattle Slip 3 VTS Replacement Project is less than 100 m. Due to the relatively short duration of construction for the Seattle Slip 3 VTS Replacement Project and infrequent detections of Dall's porpoises, WSDOT estimated that no Dall's porpoises would be likely to enter the Level A harassment zone. Take by Level A harassment of Dall's porpoises is not anticipated or authorized.

Harbor Porpoise—From 2017 through 2022, WSDOT recorded 655 detections of harbor porpoises with a maximum of

72 detections on a single day (WSDOT 2022). WSDOT estimated that up to 72 instances of take for harbor porpoises could occur per day for the 19 days of construction, for a total of 1,368 takes by Level B harassment.

The largest Level A harassment zone for high-frequency cetaceans is under 100 m. Although harbor porpoises are relatively common in the Puget Sound, we assume that WSDOT would be able to cease construction if harbor porpoises entered the Level A harassment zone before sufficient duration of exposure for PTS to occur. Take by Level A harassment is not anticipated or authorized.

California Sea Lion—California sea lions are relatively common throughout the Puget Sound. During the Seattle Multimodal Project a maximum of 29 sea lions were detected on a single day with a total of 3,669 sightings over the 377 days of monitoring (WSDOT 2022). WSDOT estimated that 32 California sea lions would enter the Level B harassment zone for each of the 19 days of construction, for a total of 551 takes by Level B harassment.

The largest Level A harassment zone for Otariids for all construction of the Seattle Slip 3 VTS Replacement Project is less than 3 m. It is highly unlikely that any Otariids would enter within 3 m of active pile driving, and no take by Level A harassment for any mid-frequency cetacean is expected to occur. Therefore, take of California sea lions by Level A harassment is not anticipated or authorized.

Steller Sea Lion—Monitoring during the Seattle Multimodal Project recorded 112 detections of Steller sea lions over 377 days of monitoring, which is less than 1 detection per day. However, a maximum of 10 detections were recorded in a single day. Therefore, WSDOT estimated that 10 Steller sea lions would enter the Level B harassment zone each day for the 19 days of construction of the project, for a total of 190 takes by Level B harassment.

The largest Level A harassment zone for Otariids for all construction of the Seattle Slip 3 VTS Replacement Project is less than 3 m. It is highly unlikely that any Otariids would enter within 3 m of active pile driving, and no take by Level A harassment for any mid-frequency cetacean is expected to occur. Therefore, take of steller sea lions by Level A harassment is not anticipated or authorized.

Harbor Seal—Harbor seals are common in the project area. During the Seattle Multimodal Project WSDOT recorded an average of 6 harbor seal detections per day and a maximum of

32 in a single day (WSDOT 2022). WSDOT estimated that a maximum of 32 harbor seals will enter the Level B harassment zones for each of the 19 days of construction, for a total of 608 takes by Level B harassment.

The largest Level A harassment zone for high-frequency phocids is under 41 m. Although harbor seals are relatively common in the Puget Sound, we assume that WSDOT would be able to cease construction if harbor seals entered the Level A harassment zone before sufficient duration of exposure for PTS to occur. Take by Level A harassment is not anticipated or authorized.

Northern Elephant Seal—Although northern elephant seals are rare in the Puget Sound, one individual was detected during the Seattle Multimodal Project. Since northern elephant seals are rare in the construction area, WSDOT estimated that a maximum of one elephant seal would enter the Level B harassment zone per day for each of the 19 days of construction. A total of 19 takes by Level B harassment is estimated for northern elephant seals for construction associated with the Seattle Slip 3 VTS Replacement Project.

Similar to harbor seals, the largest harassment zone is less than 41 m for

all construction activities. Given the anticipated rarity of occurrence for elephant seals, WSDOT does not expect northern elephant seals to enter Level A harassment zones without being detected prior to shutdown. Construction will cease if a northern elephant seal is observed entering Level A harassment zone. Therefore, no take by Level A harassment of northern elephant seals is anticipated or authorized.

TABLE 7—ESTIMATED TAKE OF MARINE MAMMAL BY LEVEL B HARASSMENT FOR 19 DAYS OF IN-WATER CONSTRUCTION

Species	Maximum sightings/day ^a	Total takes by Level B harassment	Percent of stock
Phocids:			
Harbor seal	32	608	5.51
Northern elephant seal	1	19	0.02
Otariids:			
California sea lion	29	551	0.24
Steller sea lion	10	190	0.23
Cetaceans:			
Killer whale transient	20	380	110
Gray whale	2	38	0.15
Minke whale	1	19	3.7
Harbor porpoise	72	1,368	16.5
Dall's porpoise	5	95	0.37
Common bottlenose dolphin	2	38	3.0
Pacific white-sided dolphin	2	38	0.13
Long-beaked common dolphin	5	38	0.05

^aWSDOT 2022.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) 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 (latter 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 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 to 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 will 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.

Shutdown Zones

Prior to the start of any in-water construction, WSDOT must establish shutdown zones for all planned activities. Shutdown zones are pre-defined areas within which construction will be halted upon sightings of a

marine mammal or in anticipation of a marine mammal entering the established shutdown zones. Pile-driving will not re-commence until all marine mammals are assumed to have cleared these established shutdown zones.

WSDOT must establish shutdown zones for Southern Resident killer whales (SRKWs) and humpback whales (HWs) at the Level B harassment zone for the vibratory removal of 14-in piles at 1,600 m and at 750 m for impact driving 24-in piles (table 4 and table 8). These shutdown zones are the Level B harassment zone rounded up to the nearest 50 m for each pile size and driving method. Shutdown zones for the remaining pile-driving for SRKWs and HWs will be established at 15,410 m, which is equivalent to the maximum Level B harassment area before it reaches land.

The largest Level A harassment zone for the vibratory removal of 14-in piles is 3.2 m for all cetaceans and pinnipeds. However, WSDOT will implement a shutdown zone at 50 m for removal of 14-in piles. The shutdown zones for the

remaining pile-driving activities will be established at 100 m for all hearing groups of cetaceans (except SRKWs and HWs, as discussed above) and 50 m for all pinnipeds. The largest Level A harassment zone amongst all hearing groups of cetaceans would be 97.3 m for the remaining pile-driving (table 4). The largest Level A harassment zone amongst pinnipeds will be 40.6 m for the remaining pile driving (table 4). With WSDOT's established shutdown zones, all incidental take will be prevented for SRKWs and HWs and

only take by Level B harassment is authorized to occur for the remaining species of cetaceans and pinnipeds.

WSDOT will also establish shutdown zones for all other species of marine mammals for which take has not been authorized or for which incidental take has been authorized but the number of authorized takes has already been met. Those zones will be equivalent to Level B harassment zones provided for each activity in table 4.

In addition to the shutdown zones mentioned above, WSDOT proposes to

implement shutdown measures for SRKWs and HWs. If SRKWs or HWs are observed within or approaching established shutdown zones (see table 8), WSDOT will shut down pile driving equipment to avoid take of these species. If a killer whale approaches a Level B harassment zone, and it is unknown if it is a SRKW or a Transient killer whale, WSDOT would assume it is a SRKW and implement shutdown measures. Pile driving would only resume if the killer whale could be confirmed as a Transient killer whale.

TABLE 8—SHUTDOWN ZONES FOR ALL PILE-DRIVING ACTIVITIES FOR THE SEATTLE SLIP 3 VTS REPLACEMENT PROJECT

Pile size and type	Pile driving method	Shutdown zones (m)					SRKW and HW shutdown zones (m)
		LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otarids	
14-in steel	Vibratory removal	50	50	50	50	50	1,600
24-in steel	Vibratory installation and removal	100	100	100	50	50	* 15,410
24-in steel	Impact installation	100	100	100	50	50	750
30-in steel	Vibratory installation	100	100	100	50	50	* 15,410
78-in steel	Vibratory Installation	100	100	100	50	50	* 15,410

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

Protected Species Observers

The monitoring locations for all PSOs during all pile driving activities (described in the Monitoring and Reporting Section) will ensure that the entirety of all shutdown zones are visible. If environmental conditions deteriorate such that the entirety of shutdown zones would not be visible (e.g., fog, heavy rain, Beaufort sea state, etc.) all pile driving must be delayed until PSOs are confident that marine mammals in the shutdown zones could be detected.

Monitoring for Level A and Level B Harassment

All of the harassment zones will be monitored by PSOs to the extent practicable. Established monitoring zones will allow PSOs to observe marine mammals and define clear monitoring protocols for areas adjacent to shutdown zones. The monitoring zones and protocols will enable PSOs to be aware of and communicate the presence of marine mammals in project areas and outside of project areas to prepare for potential cessation of pile driving activities should a marine mammal enter a shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activities, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs must observe shutdown and monitoring zones for a 30 minute period. The shutdown zone will

be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If pile driving is delayed or halted due to the presence of a marine mammal, the activities may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone and authorized take has not been met, activities may begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones must commence. A determination that the shutdown zone is clear must be made during a period of good visibility (i.e., the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft Start

Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors are required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. 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.

Bubble Curtain

A bubble curtain will be employed during impact installation or proofing of steel piles, unless the piles are driven in the dry, or water is less than 3 ft (feet) (0.9 m) in depth. A noise attenuation device is not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure would be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring would ensure 100 percent mudline contact. No parts of the ring or other objects will prevent full mudline contact.

Based on our evaluation of the applicant's mitigation measures, NMFS determined that the established mitigation measures 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 IHA for an activity, section 101(a)(5)(D) 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) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will 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 both to compliance as well as ensuring that 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

Marine mammal monitoring during pile driving activities must be conducted by PSOs meeting NMFS' standards and in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) 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 incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.
- PSOs must be approved by NMFS prior to beginning any activities subject to this IHA.

PSOs must have the following additional qualifications:

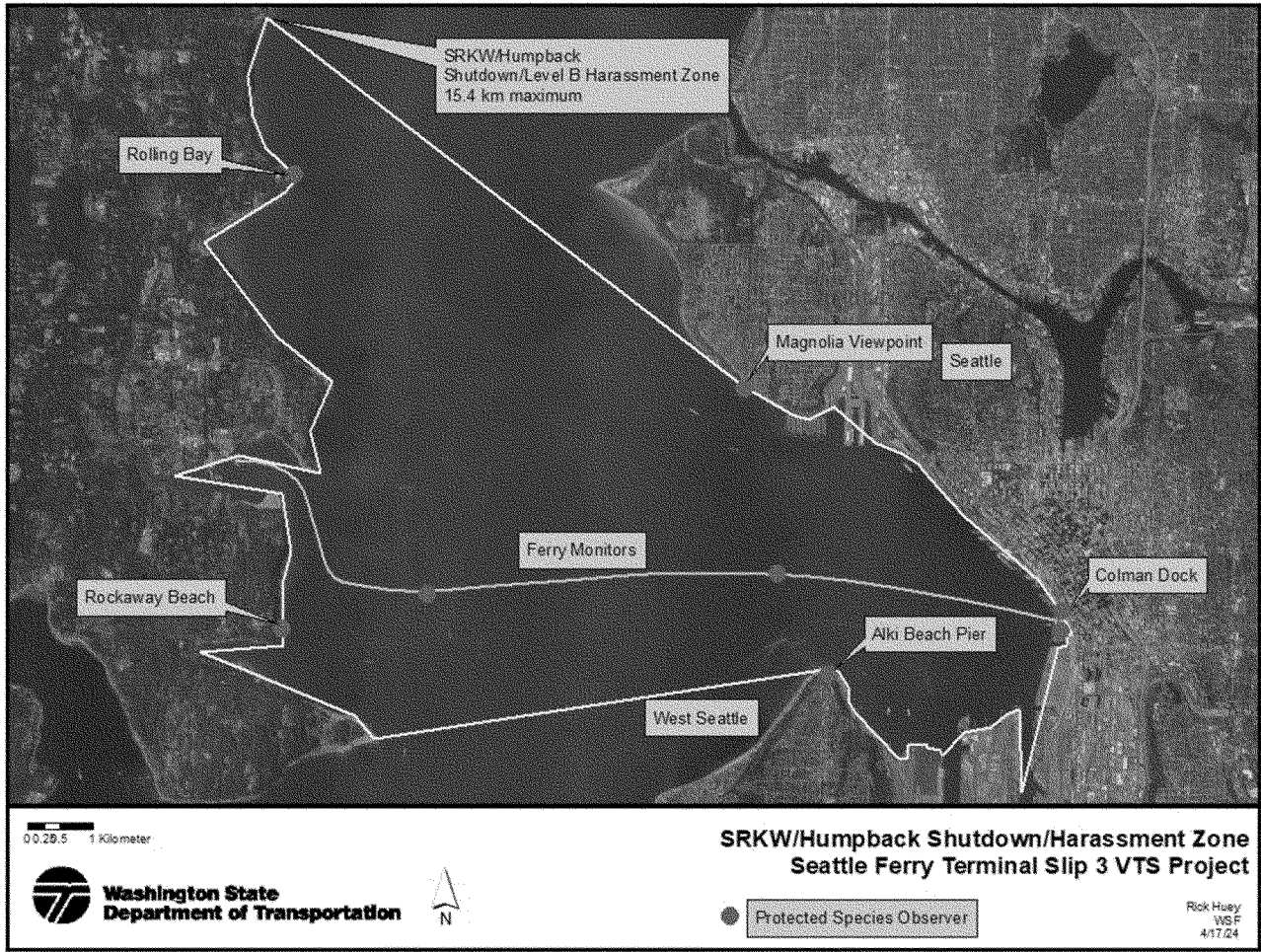
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

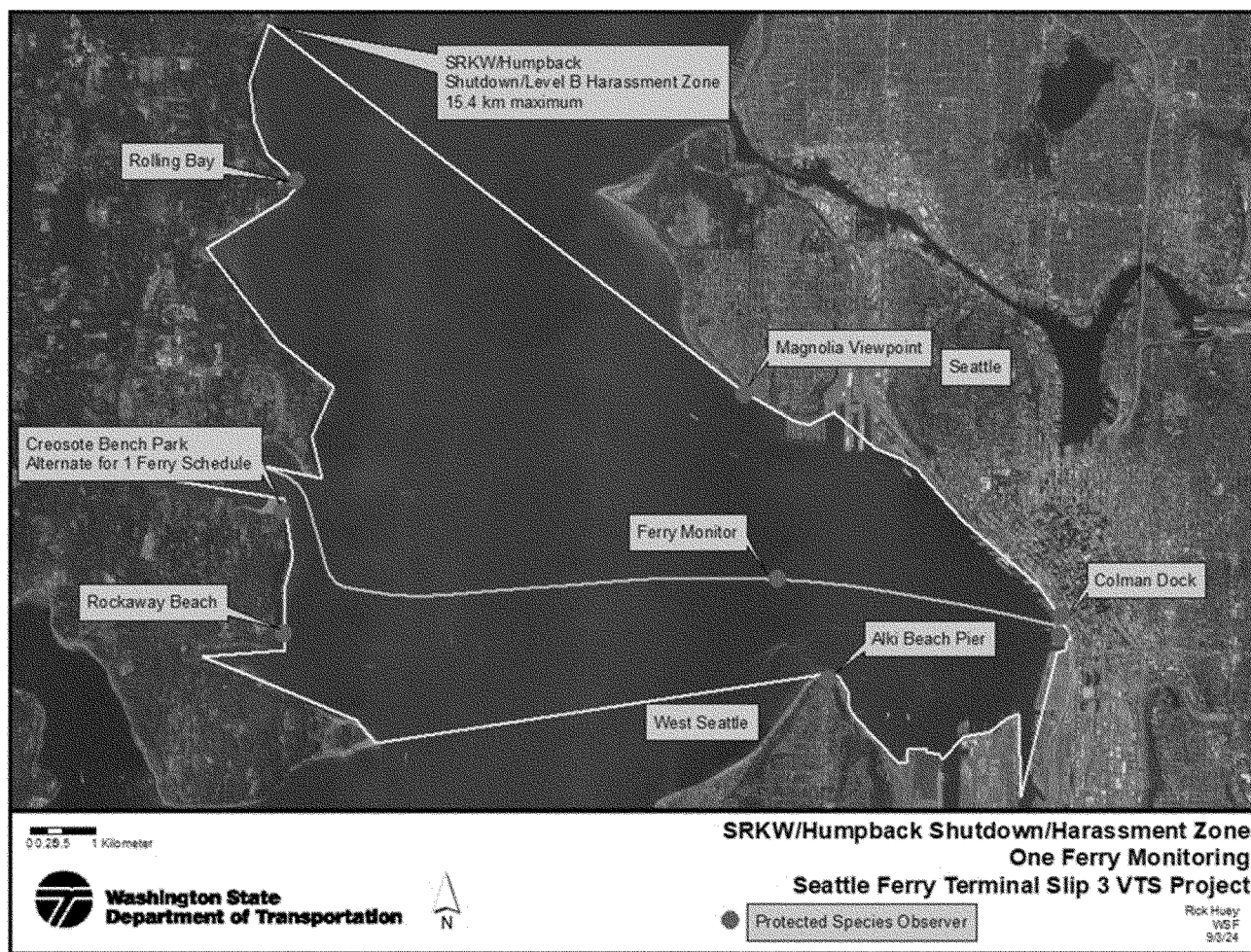
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

During all pile driving activities, a minimum of three PSO will monitor shutdown zones during pile driving activities. A total of three PSOs will monitor the area for the vibratory removal 14-in steel H-piles, two PSOs will monitor from the construction site and the other PSO will monitor from Pier 69/70. For the vibratory installation and removal of 24, 30, and 78-in steel pipe piles eight PSOs will monitor shutdown zones. PSOs as described above, one PSO will be stationed on each of the Seattle-Bainbridge Island Ferries (two PSOs in total on ferries), one PSO stationed at Alki Beach Pier on the south end of Elliott Bay, one PSO stationed at Magnolia Viewpoint on the north end of Elliott Bay, one PSO station at Rolling Bay on Bainbridge Island, and another PSO stationed at Rockaway Beach on Bainbridge Island. During impact pile driving 24-in steel pipe piles, two PSOs will be stationed at the construction site and an additional PSO will be stationed at pier 62 at the north end of the SRKW and HW shutdown zones (figure 1). If one of the Seattle-Bainbridge Island Ferries is delayed or inoperable during pile installation described above, then WSDOT must place the second ferry PSO at Creosote Bench Park on Bainbridge Island as an alternate monitoring location (figure 2).

Monitoring must be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

BILLING CODE 3510-22-P



**BILLING CODE 3510-22-C***Coordination With Marine Mammal Research Networks*

Prior to the start of pile driving for the day, the PSOs will contact the Orca Network to find out the location of the nearest marine mammal sightings. Daily sightings information will be checked several times a day. The Orca Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the United States and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to the NMFS Northwest Fisheries Science Center, the Center for Whale Research, Cascadia Research, the Whale Museum Hotline, and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water

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

WSDOT also participates in the Whale Report Alert System (WRAS/ WhaleReport Alert System—Ocean Wise). In October 2018, the Ocean Wise Sightings Network (formerly the B.C. Cetacean Sightings Network) launched an alert system that broadcasts details of whale presence to large commercial vessels. Information on whale presence is obtained from real-time observations reported to the Ocean Wise Sightings Network via the WhaleReport app. The alerts inform shipmasters and pilots of cetacean occurrence in their vicinity. This awareness better enables vessels to

undertake adaptive mitigation measures, such as slowing down or altering course in the presence of cetaceans, to reduce the risk of collision and disturbance.

All WSDOT ferry vessel crews have been trained in the use of WRAS, and input new sightings of cetaceans so data would be available to other vessels and to PSOs on the project. The lead PSO will check the WRAS sightings regularly during the day to be aware of cetaceans approaching the shutdown zones.

With this level of coordination in the region of activity, WSDOT would be able to get additional real-time information on the presence or absence of cetaceans prior to start of in-water construction each day.

Reporting

A draft marine mammal monitoring report must be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal report would include an overall description of

work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.*, impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

For each observation of a marine mammal, the following must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of 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 location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
- 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 harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft reports would constitute the final reports. If comments are received, a final report

addressing NMFS' comments is required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, WSDOT must report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region (WCR) regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, WSDOT must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. WSDOT will not resume their activities until notified by NMFS.

The report must include the following information:

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

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 rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on 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).

Pile driving and removal activities associated with this project have the potential to disturb or displace marine mammals. The activities for this project may result in incidental take, in the form of Level B harassment, from underwater sound generated from pile driving or removal. Potential takes could occur if marine mammals are present in the ensonified zone when pile driving activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance and TTS. No serious injury or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar in nature. Where there are special circumstances for a species or stock (*e.g.*, gray whales), they are included as a separate subsection below.

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude 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 to the species or stock, and the status of the species or stock. The following factors support negligible impact determinations for all affected stocks.

No take by Level A harassment is anticipated or authorized incidental to the Seattle Slip 3 VTS Replacement Project. However, take by Level B

harassment is expected and authorized for 12 marine mammal species. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as area avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff 2006 and NMFS 2018). Individual marine mammals would most likely move away from sound sources and temporarily avoid the ensonified area while pile driving is occurring. If the sound produced from the construction activities is sufficiently disturbing, marine mammals are likely to simply avoid the area while activities are occurring, particularly as the project is located on a busy waterfront with high amounts of vessel traffic. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The projects are also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to 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. Aside from the biologically important area (BIA) for gray whales described below, there are no known areas of importance for other marine mammals, such as feeding or pupping areas, in the project area.

For all species and stocks, take would occur within a limited, relatively confined area (Elliott Bay within central Puget Sound) of the stocks' ranges. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not

expected to affect marine mammals' fitness, survival, and reproduction due to the limited geographic area that will be affected in comparison to the much larger habitat for marine mammals in Puget Sound. Level B harassment will be reduced to the level of least practicable adverse impact to the marine mammal species or stocks and their habitat through use of mitigation measures described herein. Some individual marine mammals in the project areas may be present and be subject to repeated exposure to sound from pile driving on multiple days. However, these individuals would likely return to normal behavior during gaps in pile driving activity. The Seattle waterfront is a busy area and monitoring reports from previous in water pile driving activities indicate that marine mammals remain in Elliott Bay and the central Puget Sound area throughout pile driving activities. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

Gray Whales

The Puget Sound is part of a BIA for gray whales as they migrate between the Arctic and Mexico (Calambokidis *et al.*, 2024). Although the project area is located within the Puget Sound, the gray whale BIA does not overlap with the ensonified zones and gray whales typically remain further north around Whidbey and Camano Islands (Calambokidis *et al.*, 2018). Gray whales are also rarely seen in the project area. This suggests that impacts from the project would have minimal to no impact on the migration of gray whales in the BIA, and would therefore not affect reproduction or survival.

There was an unusual mortality event (UME) for gray whales from 2018 through 2023 (see the Description of Marine Mammals in the Area of Specified Activities section of this notice). However, we do not expect authorized takes for this project to have any additional effects to reproduction or survival. As mentioned previously, no take by Level A harassment, serious injury or mortality is expected. Takes authorized by Level B harassment of gray whales would be in the form of behavioral disturbance. The results from necropsies showed evidence that gray whale nutritional condition was poor during the UME. The area that would be temporarily impacted from construction

does not overlap with the gray whale feeding BIA in the northern Puget Sound. Therefore, the construction associated with the Seattle Slip 3 VTS Replacement Project is unlikely to disrupt any critical behaviors (e.g. feeding) or have any effect on reproduction or survival of gray whales.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Level A harassment is not anticipated or authorized for all 12 marine mammal species;
- Level B harassment would be in the form of behavioral disturbance, primarily resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, and some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprint of the activities;
- Nearby areas of similar habitat value within Puget Sound are available for marine mammals that may temporarily vacate the project areas during construction activities for both projects;
- 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 expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations from either project;
- The number of anticipated takes by Level B harassment is relatively low for all stocks for both projects;
- The ensonified areas from the project is very small relative to the overall habitat ranges of all species and stocks, and will not adversely affect ESA-designated critical habitat, or cause more than minor impacts in any BIAs or any other areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat from the project;
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks for the project; and
- Monitoring reports from similar work in Puget Sound that have documented little to no effect on individuals of the same species that could be impacted by the specified activities from the project.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS determined that the total marine mammal take from the activity 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 sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted 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. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all species and stocks other than killer whales from the West Coast Transient stock, the authorized take is below one-third of the stock abundance. The authorized take of Transient killer whales as a proportion of the stock abundance is greater than one-third, if all takes are assumed to occur for different individuals. The project area represents a small portion of the stock's range from Alaska to California (Muto *et al.*, 2019). Sighting reports from the Orca Network support that it is reasonable to suspect that the same individual Transient Killer whales would be present within the ensonified project area during the relatively short duration (19 days) of construction activities. Since the construction area represents a small portion of Transient killer whales range and construction would occur over a short period, it is more likely that there will be multiple takes of the same individuals.

Based on the analysis contained herein of the construction activities (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS determined 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.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is expected or authorized for this activity. 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 our proposed action (*i.e.*, the issuance of an IHA) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for 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 the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to WSDOT for the potential harassment of small numbers of 12 marine mammal species incidental to the Seattle Slip 3 VTS Replacement project in Seattle, Washington, that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: September 13, 2024.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Publication of Fiscal Year 2023 Service Contract Inventory

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia (CSOSA).

ACTION: Notice of public availability.

SUMMARY: In accordance with section 743 of Division C of the FY2010 Consolidated Appropriations Act, the Court Services and Offender Supervision Agency hereby advises the public of the availability of the FY 2020 Service Contract Inventory. This analysis provides information on service contract actions over \$25,000 that were made in FY2022. The information is organized by function to show how contracted resources are distributed throughout the agency. This inventory analysis and plan have been developed in accordance with guidance issued on November 5, 2010, and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). CSOSA's FY2022 Service Contract Inventory Analysis, and the FY2023 Service Contract Inventory Plan is available on CSOSA's website at: [CSOSA-SCI-2022-2023-Analysis-Report.pdf](#). CSOSA's FY 2022 service contract inventory data is included in the government-wide inventory posted on [www.acquisition.gov](#) and the government-wide inventory can be filtered to display the inventory data for CSOSA.

FOR FURTHER INFORMATION CONTACT:

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Dated: September 13, 2024.

Willis Stamps,

Supervisory Attorney-Advisor.

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