



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Department Of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

INCIDENTAL HARASSMENT AUTHORIZATION

The Washington State Department of Natural Resources (DNR), 1111 Washington St SE, Olympia, WA 98504-7014, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371) to harass marine mammals incidental to restoration activities in Woodard Bay Natural Resources Conservation Area, Washington.

1. This Incidental Harassment Authorization (IHA) is valid from November 1, 2012, through March 15, 2013.
2. This Authorization is valid only for restoration activities associated with the DNR's habitat restoration project in the Woodard Bay Natural Resource Conservation area.
3. General Conditions
 - (a) A copy of this Authorization must be in the possession of the DNR, its designees, and personnel operating under the authority of this IHA.
 - (b) This Authorization allows the incidental taking, by Level B harassment only, of 1,680 harbor seals (*Phoca vitulina*).
 - (c) The taking by injury, serious injury, or death of any of the species listed in item 3(b) of the Authorization or the taking by harassment, injury or death of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.
 - (d) The DNR shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and DNR staff prior to the start of activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.
 - (e) The DNR shall comply with applicable equipment noise standards of the U.S. Environmental Protection Agency and ensure that all construction equipment has noise control devices no less effective than those provided on the original equipment.
4. Mitigation Measures



In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

- (a) No pile or structure removal shall occur outside of the effective dates of this Authorization;
- (b) The DNR shall approach the action area with caution to alert seals to their presence from a distance and shall begin conducting the specified activity at the farthest location practicable from harbor seal haul-out areas;
- (c) The contractor or protected species observer (PSO) shall survey the operational area for seals before initiating activities and wait until the seals are at a sufficient distance (i.e., 50 ft (15 m)) from the activity so as to minimize the risk of direct injury from the equipment or from piling or structure breaking free;
- (d) The DNR shall require the contractor to initiate a vibratory hammer soft start at the beginning of each work day; and
- (e) The vibratory hammer power pack shall be outfitted with a muffler to reduce in-air noise levels to no higher than 80 dB re: 20 μ Pa.

The soft start method shall include a reduced energy vibration from the hammer for the first 15 seconds and then a one minute waiting period. This method shall be repeated twice before commencing with regular energy operations.

5. Monitoring

The holder of this Authorization is required to conduct marine mammal monitoring during restoration activity as described below:

- (a) The DNR shall employ at least one PSO at each harbor seal haul-out, for a minimum of 15 total work days, including the following times:
 - i. During the first 5 days of project activities, when the contractors are mobilizing and starting use of the vibratory hammer;
 - ii. During 5 days when activities are occurring nearest to the haul-out area(s); and
 - iii. During at least 5 additional days that shall include days when fill removal is occurring in Woodard Bay, to be decided when the schedule of work is provided by the contractor.

The 5 days described under 5(a)iii shall be days of heightened activity levels, or days that are otherwise anticipated to be more likely to result in disturbance of

harbor seals (should such days exist), or otherwise shall be selected to be days that are representative of typical levels of activity.

- (b) The PSO shall begin monitoring 30 minutes prior to crew arrival, during the entirety of the monitoring day's restoration activities; and 30 minutes after crew leave the site (or until darkness, whichever is sooner); and
- (c) The PSO shall keep a low profile and engage in minimal movement during monitoring as to not disturb the seals.

6. Reporting

The holder of this Authorization is required to:

- (a) Submit a draft report to NMFS within 45 days of the completion of marine mammal monitoring. A final report shall be prepared and submitted to NMFS within thirty days following receipt of comments on the draft report from NMFS. This report must contain the following information, at minimum:
 - i. The number of seals using the haul-out on each monitoring day prior to the start of restoration activities for that day;
 - ii. The number of seals that flush from the haul-out or, for animals already in the water, that display behavioral reactions;
 - iii. Seal behavior before, during and after disturbance;
 - iv. The proximity of seals to the disturbance source upon onset of behavioral changes;
 - v. Monitoring dates, times and conditions;
 - vi. Dates and description of all restoration activities;
 - vii. After correcting for observation effort, the number of seals taken over the duration of the habitat restoration project; and
 - viii. Detailed observational notes regarding sightings of individuals of any species other than harbor seals.
- (b) Reporting injured or dead marine mammals:
 - i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, DNR shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources,

NMFS, and the Northwest Regional Stranding Coordinator, NMFS. The report must include the following information:

- A. Time and date of the incident;
- B. Description of the incident;
- C. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- D. Description of all marine mammal observations in the 24 hours preceding the incident;
- E. Species identification or description of the animal(s) involved;
- F. Fate of the animal(s); and
- G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with DNR to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. DNR may not resume their activities until notified by NMFS.

- ii. In the event that DNR discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), DNR shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS.

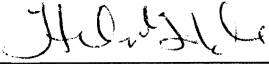
The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with DNR to determine whether additional mitigation measures or modifications to the activities are appropriate.

- iii. In the event that DNR discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), DNR shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Northwest Regional Stranding Coordinator, NMFS, within 24 hours of the

discovery. DNR shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

SEP 04 2012



Helen M. Golde
Acting Director, Office of Protected Resources
National Marine Fisheries Service

Date