

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648–XC890]

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Punta Gorda Lighthouse Stabilization Project in Humboldt County, California**

**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 the Bureau of Land Management (BLM) for authorization to incidentally harass marine mammals during construction activities associated with Phase 2 of the Punta Gorda Lighthouse (PGL) Stabilization Project in Humboldt County, California.

**DATES:** This authorization is effective from June 1, 2023, through October 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401.

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 above.

**SUPPLEMENTARY INFORMATION:****Background**

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the

taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring, and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**Summary of Request**

On October 26, 2022, NMFS received a request from BLM for an IHA to take marine mammals incidental to Phase 2 of the PGL Stabilization Project in Humboldt County, California. Following NMFS’ review of the application, BLM submitted a revised version on January 27, 2023, and again on February 8, 2023. The application was deemed adequate and complete on February 9, 2023. BLM’s request is for take of northern elephant seal (*Mirounga angustirostris*), Pacific harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus*), and Steller sea lion (*Eumetopias jubatus*) by Level B harassment only. Neither BLM nor NMFS expect serious injury or mortality to these marine mammals to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to BLM for related work (87 FR 34659, June 7, 2022). BLM complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Effects of the Specified Activity on Marine Mammals and Their Habitat section in the **Federal Register** notice for the proposed IHA (88 FR 17525, March 23, 2023) and Estimated Take sections.

This IHA covers the final year of work of a larger project for which BLM obtained a prior IHA. The larger 2-year project involves construction activities to restore all remaining buildings of the PGL Site. There are no changes from the proposed IHA to the final IHA.

**Description of the Planned Activity***Overview*

The PGL was established as an aid to navigation in 1912 along the northern California coast. While in use, the lighthouse station included the lighthouse, oil house, three residences, and numerous other small buildings typical of small military outposts. The U.S. Coast Guard decommissioned the lighthouse in 1951. BLM assumed management of the site following the PGL’s decommission. The concrete lighthouse and oil house were all that remained when the site was listed in the National Registry of Historic Places in 1976.

BLM repaired and stabilized the lighthouse building itself during the summer of 2022. Construction activities are planned to repair and stabilize the remaining structure at the site, which is an oil house. Human presence, noise from construction work, and noise from and/or presence of supply transport vehicles may result in behavioral disturbance primarily of harbor seals and northern elephant seals, and potentially California sea lions and Steller sea lions. The project will take no more than 122 construction days between June and September 2023.

A detailed description of the planned lighthouse stabilization project is provided in the **Federal Register** notice for the proposed IHA (88 FR 17525, March 23, 2023). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting sections).

**Comments and Responses**

A notice of NMFS’s proposal to issue an IHA to BLM was published in the **Federal Register** on March 23, 2023 (88 FR 17525). That notice described, in detail, BLM’s activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, the United States Geological Survey noted that they have “no comment at this time”. NMFS received no other public comments.

**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, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments](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 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. For some species, this geographic area 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 2022 SARs) and are available online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments).

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
<b>Order Carnivora—Superfamily Pinnipedia</b>						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	<i>Eumatopias jubata</i>	Eastern U.S.	- , - , N	43,201 (N/A, 43,201, 2017) ...	2,592	112
California sea lion	<i>Zalophus californica</i>	U.S.	- , - , N	257,606 (N/A, 233,515, 2014)	14,011	≥321
Family Phocidae (earless seals):						
Northern elephant seal	<i>Mirounga angustirostris</i>	California Breeding	- , - , N	187,386 (N/A, 85,369, 2013)	5,122	13.7
Pacific Harbor seal	<i>Phoca vitulina richardii</i>	California	- , - , N	30,968 (N/A 27,348, 2012) ...	1,641	43

<sup>1</sup> 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.

<sup>2</sup> NMFS marine mammal stock assessment reports online at: [www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments). CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable.

<sup>3</sup> 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.

As indicated above, all four species (with four managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

A detailed description of the of the species likely to be affected by the lighthouse stabilization 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 (88 FR 17525, March 23, 2023); 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.

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

Acoustic and visual stimuli generated by personnel working at the PGL and traversing the beach to access the work site, noise from construction equipment operating at PGL, and helicopters hovering over the site to transport equipment and supplies may have the potential to cause behavioral disturbance (Level B harassment) of marine mammals in the vicinity of the project area. The **Federal Register** notice of the proposed IHA (88 FR 17525, March 23, 2023) included a discussion of the effects of anthropogenic activity on marine mammals and their habitat. That information and analysis is incorporated by reference into the final determination for the IHA and is not repeated here; please refer to the notice of proposed IHA (88 FR 17525, March 23, 2023).

The Estimated Take section later in this document includes a quantitative

analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of "small numbers," and the negligible impact determinations.

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

MMPA 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 will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to construction personnel and equipment, including helicopters used to transport materials. Based on the nature of the activity, Level A harassment is neither anticipated nor

authorized. For BLM’s activities, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses (Table 2).

The presence of construction personnel may have the potential to cause Level B harassment of marine mammals hauled-out at the PGL and along the planned access route. Disturbance includes a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of BLM’s construction personnel (e.g., turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral

harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than two body lengths or longer, or if already moving, a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels 2 and 3 (movement and flush) are considered take, whereas level 1 (alert) is not. Animals that respond to the presence of BLM personnel by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

TABLE 2—DISTURBANCE SCALE OF PINNIPED RESPONSES

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal’s body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal’s body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

\* Only Levels 2 and 3 are considered take under the MMPA. Level 1 is not considered take.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are calculated.

*Marine Mammal Occurrence*

In this section we provide information about the occurrence of marine

mammals, including density or other relevant information that will inform the take calculations.

Researchers from Humboldt State University (HSU) regularly conduct census counts of pinnipeds at the PGL and surrounding areas along the northern California coast (e.g., Goley *et al.*, 2021, BLM 2022). Protected Species

Observers (PSOs) on site during the first year of construction recorded daily counts as well. Counts of northern elephant seals, harbor seals, California sea lion, and Steller sea lion at the PGL during the effective dates of the issued IHA (June 1 until October 1) are presented below.

TABLE 3—PINNIPED CENSUS COUNTS AT PUNTA GORDA LIGHTHOUSE

Date	Number of elephant seals observed	Number of harbor seals observed*	Number of California sea lions observed*	Number of Steller sea lions observed*
<b>2019 Counts</b>				
June 8	101	51	-	-
June 15	74	107	-	-
June 23	34	81	-	-
July 7	40	116	-	-
July 14	50	180	-	-
July 21	54	123	-	-
August 3	39	105	-	-
August 21	44	80	-	-
August 31	62	22	-	-
September 15	162	22	-	-
September 27	244	28	-	-
<b>2020 Counts</b>				
June 4	177	-	-	-
June 11	83	-	-	-

TABLE 3—PINNIPED CENSUS COUNTS AT PUNTA GORDA LIGHTHOUSE—Continued

Date	Number of elephant seals observed	Number of harbor seals observed *	Number of California sea lions observed *	Number of Steller sea lions observed *
June 14 .....	80	55	-	-
June 24 .....	37	-	-	-
June 27 .....	38	77	-	-
July 4 .....	36	-	-	-
July 12 .....	39	90	-	-
July 16 .....	38	-	-	-
July 24 .....	36	123	-	-
July 30 .....	38	-	-	-
August 6 .....	32	-	-	-
August 9 .....	28	73	-	-
August 13 .....	28	-	-	-
August 20 .....	27	-	-	-
August 27 .....	33	-	-	-
August 30 .....	48	36	-	-
September 5 .....	60	38	-	-
September 19 .....	133	51	-	-
September 27 .....	177	53	-	-
<b>2021 Counts</b>				
June 10 .....	199	-	-	-
June 29 .....	59	109	-	-
July 10 .....	48	128	-	-
July 26 .....	34	104	-	-
August 7 .....	30	103	-	-
August 22 .....	42	68	-	-
September 2 .....	106	-	-	-
September 16 .....	135	-	-	-
<b>2022 Counts</b>				
June 22 .....	39	42	0	0
June 23 .....	53	50	0	0
June 24 .....	34	117	0	0
June 25 .....	50	110	0	0
June 27 .....	38	150	0	0
June 28 .....	61	126	0	0
June 29 .....	54	132	0	0
June 30 .....	56	169	0	0
July 1 .....	52	137	0	0
July 5 .....	48	156	0	0
July 6 .....	51	142	0	0
July 7 .....	34	-	0	0
July 8 .....	33	121	0	0
July 9 .....	56	141	0	0
July 11 .....	28	106	0	0
July 12 .....	37	139	0	1
July 13 .....	38	156	0	0
July 14 .....	34	190	0	0
July 15 .....	37	134	0	0
July 16 .....	30	136	0	0
July 18 .....	29	114	0	0
July 19 .....	30	108	0	0
July 20 .....	25	122	0	0
July 21 .....	27	99	0	0
July 22 .....	32	109	0	0
July 23 .....	31	109	0	0
July 25 .....	29	115	0	0
July 26 .....	33	93	0	0
July 27 .....	30	58	0	0
July 28 .....	29	91	0	0
July 29 .....	33	73	0	0
August 1 .....	31	82	0	0
August 2 .....	28	76	0	0
August 4 .....	32	77	0	0
August 5 .....	28	105	2	0
August 6 .....	29	72	0	0
August 8 .....	26	71	0	0
August 9 .....	27	55	10	0
August 10 .....	28	48	7	0

TABLE 3—PINNIPED CENSUS COUNTS AT PUNTA GORDA LIGHTHOUSE—Continued

Date	Number of elephant seals observed	Number of harbor seals observed*	Number of California sea lions observed*	Number of Steller sea lions observed*
August 11	32	41	0	0
August 12	38	56	0	0
August 15	34	46	0	0
August 16	40	56	3	0
August 17	42	61	0	0
August 18	44	50	0	0
August 19	42	64	0	0
August 20	39	56	0	0
August 22	40	57	7	0
August 23	48	58	6	0
August 24	48	60	0	0
August 25	54	59	0	0
August 26	51	48	0	0
August 27	54	38	0	0
August 29	65	37	0	0
August 30	57	51	1	0
August 31	46	49	0	0
September 1	60	41	0	0
Daily Average	52.4	87.4	0.6	0.02

\* Dashes (-) refer to instance where researchers did not record occurrence information.

Between 2019 and 2022, census counts of elephant seals and harbor seals were collected at PGL during the effective dates of the IHA (June 1–October 1). Across all 4 years, the average daily count was 52.4 elephant seals (Goley *et al.*, 2021, BLM 2022). A large proportion of the elephant seals present at PGL are uniquely tagged and dye stamped to identify individuals and the same individuals were identified at the PGL haulout on multiple days. Across all 4 years, the daily average of harbor seals was 87.4. The harbor seals present at the PGL are not tagged or otherwise clearly identifiable, but since harbor seals typically show hauling site fidelity (Herder 1986, Yochem *et al.*, 1987, Dietz *et al.*, 2012, Waring *et al.*, 2016), researchers from HSU hypothesize that the harbor seal colony at the PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts.

During the first year of construction (June–October 2022), PSOs recorded the number of California and Steller sea lions present in the PGL area. The daily average count of California sea lions was 0.6 and the daily average count of Steller sea lions was 0.02.

*Take Estimation*

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur for authorization.

To estimate the total number of pinnipeds that may be present at the PGL and subject to behavioral disturbance from the PGL stabilization project, BLM multiplied the daily count of each species averaged across all years of available census data (52.4 elephant seals, 87.4 harbor seals, 0.6 California sea lions, and 0.02 Steller sea lions) by the maximum days of work at the PGL (122 days), for an estimated total take events of 6,393 for northern elephant

seals, 10,663 for harbor seals, 73 for California sea lions, and 2 for Steller sea lions) taken by Level B harassment. This estimation assumes that all animals present will exhibit behavioral responses that are considered take (Levels 2 and Level 3 as described in Table 2). As described above, many of the seals present at the PGL are suspected or confirmed to be present across multiple days. Therefore, the above estimated take numbers are considered to represent instances of take, not necessarily the number of individual seals that may be taken. In the case of Steller sea lion, two takes may not adequately account for all instances of possible take that could occur should multiple individuals enter the project area over the course of construction, or one individual enter the project area on multiple occasions. As such the take estimate for this species has been increased to 30 as requested by the applicant.

TABLE 4—AUTHORIZED TAKE BY LEVEL B HARASSMENT BY SPECIES AND PERCENTAGE OF EACH STOCK AFFECTED

Species	Stock	<sup>a</sup> Authorized take by Level B harassment	Stock abundance	Percent of stock
Northern elephant seal	California breeding	6,393	187,386	3.4
Pacific harbor seal	California	10,663	30,968	34.4
California sea lion	U.S.	73	257,606	0.03
Steller sea lion	Eastern U.S.	30	77,149	0.04

<sup>a</sup> The authorized take represents the estimated number of instances of take, which does not equate to the number of individuals that may be taken.

## 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.

The following mitigation measures are required:

The work season has been planned to reduce the level of impact on elephant and harbor seals. The effective dates of the IHA (June 1, 2022 through October 1, 2022) occur when the elephant seal presence is at its lowest and any harbor seal pups that may be on site will be old enough to be self-sufficient if the colony temporarily flushes into the water. No elephant seal pups are expected to be present during the work season.

To the extent possible, BLM will limit the daily number of vehicle trips between the project area and the contractor's offshore camp where additional tools and supplies will be

stored in trailers or other storage containers.

While accessing and departing the project site, trained PSOs will monitor ahead of the vehicle(s) path, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation (*e.g.*, change of course, slow down) is required. Vehicles will not approach within 20 m of marine mammals. If animals remain in the access path with no possible route to go around and maintain 20 m separation, a PSO may walk toward the animals and intentionally flush them into the water to allow the vehicle(s) to proceed. To the extent possible, if multiple vehicles are traveling to the site, they should travel in a convoy such that animals are not potentially harassed more than once while the vehicles pass.

At least one PSO will arrive onsite 10 minutes ahead of contractors each day to obtain counts in two separate locations viewing both haulouts before work commences.

A fence will be erected to keep elephant seals from entering the construction area to limit disturbance and prevent accidental injury from vehicles and construction debris.

All helicopters associated with the project will slowly approach the work site and allow all marine mammals present to flush into the water before setting any hauled materials down on the ground.

BLM must cease or delay visits to the project site if a species for which the number of takes that have been authorized for a species are met, or if a species for which takes were not authorized, is observed.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the 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

At least one NMFS-approved PSO will travel to and from the construction site ahead of the work crew each day and serve as a lead monitor to record incidental take. PSOs will consist of BLM wildlife biologists, biological technicians, and interns, as well as King Range National Conservation Area staff. At least one PSO will monitor the beach surrounding the PGL during all construction activities.

PSOs should have the following 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 of species of marine mammals observed; dates and times when 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 mammal observed in the area when necessary.

PSOs must record the following information for each day of work:

- Date, time, and access route of each visit to the work site;

- Information on the weather, including tidal state and estimated horizontal visibility;

- Composition of marine mammals observed, such as species, sex, and life history stage (*e.g.*, adult, sub-adult, pup);

- Estimated numbers (by species) of marine mammals observed during the activities;

- Location of marine mammals observed during construction activities.

- Marine mammal disturbances according to a three-point scale of intensity (see Table 2)

- Behavioral responses or modifications of behaviors that may be attributed to the specific activities, a description of the specific activities occurring during that time (*e.g.*, pedestrian, vehicle, or helicopter approach), and any mitigation action taken; and

- Note the presence of any offshore predators (date, time, number, and species).

#### Reporting

The BLM will report all observations of marked or tag-bearing pinnipeds or carcasses and unusual behaviors, distributions, or numbers of pinnipeds to the NMFS West Coast Regional Office.

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of each work season, or 60 days prior to the requested issuance date of any future IHAs for projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS on the draft report, the draft report will be considered the final report. The marine mammal report will

include an overall description of work completed, a narrative regarding marine mammal sightings and behavioral response to construction activities, and associated PSO data sheets.

In addition to submitting raw sightings data, the report must include:

- Dates, and times (begin and end) of all marine mammal monitoring;

- Construction activities occurring during each daily observation period such as supply transport via ground and/or helicopter, fence installation, trail maintenance, and demolition *etc.*;

- PSO locations during marine mammal monitoring; and

- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), and any relevant weather conditions including fog, sun glare, and estimated observable distance.

Prior to the commencement of activities, on each subsequent hour during construction, and before finishing construction each day, PSOs will record and report the following marine mammal observations:

- Name of the PSO who completed the observations and PSO location and activity at the time of recording;

- Time of observation;

- The number (by species) of marine mammals observed during the activities, by age and sex, if possible, and distances to construction activities. Data may be reported according to groups in cases where animals are concentrated together;

- The behavioral response of marine mammals (by species, age, and sex as possible) to construction activities based on the 3 point scale (Table 2), including distances to construction activities and descriptions of construction activities occurring at the time of observance.

When pinnipeds are concentrated in groups, closest distance of the group to construction activities may be reported; and

- A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

Separately, the same information should be recorded and reported each time Level 2 or Level 3 harassment of marine mammals is observed.

#### Reporting Injured or Dead Marine Mammals

In the event that BLM or any other personnel involved in the activities discover an injured or dead marine mammal, BLM will report the incident to the NMFS Office of Protected

Resources (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury were clearly caused by a specific activity, BLM will immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. BLM will not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude and longitude) of the first discovery (and updated location information if known and applicable);

- Species identification (if known) or description of the animal(s) involved;

- Condition of the animal(s) (including carcass condition of the animal is dead);

- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and

- General circumstances under which the animal was discovered.

#### Negligible Impact Analysis and Determination

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

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 4, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that will lead to a different analysis for this activity. Activities associated with Phase 2 of the PGL stabilization project, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential takes could occur if individual marine mammals are present nearby when activity is happening.

No injuries or mortalities are anticipated to occur as a result of the PGL stabilization project and none are authorized. The risk of marine mammal injury, serious injury, or mortality associated with the construction project increases somewhat if disturbances occur during pupping season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (e.g., through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. However, the planned activities will occur outside of the elephant seal pupping season, therefore no elephant seal pups are expected to be present. Although the timing of the activities will partially overlap with harbor seal pupping season, the PGL is not a harbor seal rookery and few pups are anticipated to be encountered during the planned construction. In fact, the daily average of harbor seal pups present at PGL during 2022 construction (June 22–September 1) was just 1.7. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. The planned activities will occur late enough in the pupping season that any harbor seal pups present will likely be old enough to keep up with their mother in unlikely event of a stampede or other flushing event. The mitigation measures (*i.e.*, minimum separation

distance, slow approaches, and minimizing vehicle trips to the PGL) generally preclude the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

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 including phase 1 construction at this site, will likely be limited to reactions such as alerts or movements away from the lighthouse structure, including flushing into the water. Most likely, individuals will simply move away from the acoustic or visual stimulus and be temporarily displaced from the areas. In fact, during the first year of construction at PGL elephant seals were not observed flushing at any point during construction and were only observed moving on 11 occasions. Harbor seals were observed flushing 255 times and moving 322 times, which represents a small fraction (6 percent) of the Level B harassment authorized for the project (BLM 2022).

Monitoring reports from similar activities (e.g., Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021) have reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors or result in permanent abandonment of the haulout site. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

Of the marine mammal species anticipated to occur in the planned activity areas, none are listed under the ESA and there are no known areas of biological importance in the project area. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary displacement

from haulout sites. The Lost Coast area has abundant haulout areas for pinnipeds to temporarily relocate, and marine mammals are expected to return to the area shortly after activities cease. No adverse effects to prey species are anticipated as no work will occur in-water, and habitat impacts are limited and highly localized, consisting of construction work at the existing lighthouse station and the transit of vehicles and equipment along the access route. 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 planned mitigation and monitoring measures, NMFS finds that the total marine mammal take from BLM's PGL stabilization project will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

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, or Level A harassment is anticipated or authorized;
- Few pups are expected to be disturbed, and will not be abandoned or otherwise harmed by other seals flushing from the area;
- Effects of the activities will be limited to short-term, localized behavioral changes;
- Nominal impacts to pinniped habitat are anticipated
- No biologically important areas have been identified in the project area;
- There is abundant suitable habitat nearby for marine mammals to temporarily relocate; and
- Mitigation measures are anticipated to be effective in minimizing the number and severity of takes by Level B harassment, which are expected to be of short duration.

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 planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned 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 section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers 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.

With the exception of Pacific harbor seals, the amount of take NMFS proposes to authorize is well below one-third of any stock's best population estimate (see Table 4), which NMFS considers to be small relative to stock abundance. In fact, the annual take by Level B harassment is less than 1 percent of stock abundance for both otariid species that may be encountered in the project area (*i.e.*, California sea lion and Steller sea lion), and less than 4 percent of the northern elephant seal stock's best population estimate. While the estimated take of Pacific harbor seal equates to over 33 percent of the Pacific harbor seal stock, these takes represent instances of take, not necessarily the number of individual seals that may be taken. As such, in all cases, including Pacific harbor seal, these take estimates are considered conservative because NMFS assumes all takes are of different individual animals which is likely not the case. Researchers from HSU have used tags and dye stamps to identify individual elephant seals and have verified the same individuals are hauling out at PGL. While harbor seals are not marked or otherwise clearly identifiable, HSU researchers hypothesize that the harbor seal colony at PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts. This is based on the fact that this species typically shows hauling site fidelity (Herder 1986, Yochem *et al.*, 1987, Dietz *et al.*, 2012, Waring *et al.*, 2016). Therefore, many individuals that may be taken by Level B harassment are likely to be the same across consecutive days, despite PSOs counting them as separate takes throughout the duration of the project.

Based on the analysis contained herein of the authorized activity (including mitigation and monitoring

measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will 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 will 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 Endangered Species Act of 1973 (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, in this case with the West Coast Regional Office.

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

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that will preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

#### Authorization

NMFS has issued an IHA to BLM for the potential harassment of small numbers of four marine mammal species incidental to the Phase 2 of the PGL Stabilization Project repair in Humboldt County, California from June 1 through September 30, 2023, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: May 10, 2023.

**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-XC814]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

**ACTION:** Notice; selection of an authorized distributor.

**SUMMARY:** NMFS announces the renewal of two prohibited species donation (PSD) permits to SeaShare, a non-profit and tax exempt organization, authorizing this organization to distribute Pacific salmon and Pacific halibut to hunger relief agencies, food bank networks, or food bank distributors under the PSD program. Salmon and halibut are caught incidentally during directed fishing for groundfish with trawl gear off Alaska. This action is necessary to comply with provisions of the PSD program and is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

**DATES:** The permits are effective from May 18, 2023 through May 25, 2026.

**ADDRESSES:** Electronic copies of the PSD permits for salmon and halibut prepared for this action may be obtained from the Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

**FOR FURTHER INFORMATION CONTACT:** Megan Mackey, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

#### Background

Fishing for groundfish by United States vessels in the exclusive economic