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The items of discussion at the SEDAR 95 Atlantic Migratory Cobia Removals Webinar II are as follows: Discuss and review available removals data streams and provide recommendations for their use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC964]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, 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 San Mateo County Harbor District to incidentally harass marine mammals during activities associated with the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California. There are no changes from the proposed authorization in this final authorization.

DATES: This Authorization is effective from December 1, 2024 through November 30, 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/action/incidental-take-authorization-san-mateo-county-harbor-districts-pillar-point-harbor-johnson>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, 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 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 August 10, 2022, NMFS received a request from the San Mateo County Harbor District (SMCHD) for an IHA to take marine mammals incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California. Following NMFS’ review of the application and in response to our comments, SMCHD submitted revised versions on October 4, 2022, and December 6, 2022. The application was deemed adequate and complete on December 13, 2022. The notice of the proposed IHA and request for comments was published on February 27, 2023 (88 FR 12334). SMCHD’s request is for take of harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) by Level A and Level B harassment. This IHA will cover 1 year of a larger project for which SMCHD intends to request take authorization for subsequent facets of the project. The larger 2-year project involves the expansion of the Johnson Pier commercial docks and fuel pier. Neither SMCHD nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

The SMCHD plans to demolish and replace/expand the Johnson Pier at Pillar Point Harbor in San Mateo County, California. Demolition of the North Timber Pier and the commercial floating docks and fuel dock will be followed by expansion of the pier and replacement of the commercial and fuel docks. The project includes impact and

vibratory pile driving and vibratory pile removal. Sounds resulting from pile driving and removal may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment. Underwater sound will be constrained to the inner harbor area by solid rubble-mound breakwaters. The project period includes up to 130 days of pile installation and extraction activities for which incidental take is authorized.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (88 FR 12334, February 27, 2023). 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 detailed description of the specific activity.

Comments and Responses

A notice of NMFS’ proposal to issue an IHA to SMCHD was published in the **Federal Register** on February 27, 2023 (88 FR 12334). That notice described, in detail, SMCHD’s activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment

period. NMFS received no substantive comments on the proposed IHA.

Changes From the Proposed IHA to Final IHA

Changes were made between publication of the notice of the proposed IHA and this notice of the final IHA. The effective dates of the authorization have been changed from January 1, 2024 through December 31, 2024 to December 1, 2024 through November 30, 2025 at the applicant’s request. Additionally, the Monitoring and Reporting section was updated to include a requirement that all PSO data will be submitted electronically with the draft marine mammal report in a format that can be queried, such as a spreadsheet or database.

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) 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 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. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS’ U.S. Pacific SARs (e.g., Caretta *et al.*, 2023). All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at: 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) ¹	Stock abundance (CV, Nmin, most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	<i>Zalophus californianus</i>	United States	-/, N	257,606 (N/A, 233,515, 2014)	14,011	>321
Family Phocidae (earless seals):						
Harbor Seal	<i>Phoca vitulina</i>	California	-/, N	30,968 (N/A, 27,348, 2012)	1,641	43

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or 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.

² NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

³ 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.

A detailed description of the of the species likely to be affected by the Johnson Pier 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 12334, February 27, 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.

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.*). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. 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.

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).

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 and Holt, 2013).

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

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from SMCHD’s construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the construction area. The notice of proposed IHA (88 FR 12334, February 27, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from impact and vibratory pile driving on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here;

please refer to the notice of proposed IHA (88 FR 12334, February 27, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs 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 primarily be by Level B harassment, as noise generated during construction activities (i.e., impact and vibratory pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some

potential for auditory injury (Level A harassment) to result. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

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

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would be ensounded above these levels in a day; (3) the density or occurrence of marine mammals within these ensounded 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 take estimates.

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).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic

threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous non-impulsive (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (e.g., impact pile driving) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

SMCHD’s planned activity includes the use of continuous non-impulsive (vibratory pile installation and extraction) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are applicable.

Level A Harassment—NMFS’ Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). SMCHD’s planned activity includes the use of non-impulsive (vibratory pile installation and extraction) and impulsive (impact pile driving) sources.

These thresholds are provided in Table 3. The references, analysis, and methodology used in the development of the thresholds are described in NMFS’ 2018 Technical Guidance, which may be accessed at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (Received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB	Cell 10: $L_E,OW,24h$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

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 planned project. Pile driving generates underwater noise that can potentially

result in disturbance to marine mammals in the project area. The maximum (underwater) area ensonified is determined by the topography of the Pillar Point inner harbor, including hard structure breakwaters that bound the inner harbor and preclude sound from transmitting into the outer harbor. Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels, which

may mask sounds produced by the project.

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 * Log₁₀ (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

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for

each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods (Table 4). Generally, we choose source levels from similar pile types from locations (e.g., geology, bathymetry) similar to the project. At this time, NMFS is not aware of reliable source levels available for

fiberglass piles using vibratory pile installation; therefore, source levels for timber pile driving were used as a proxy. While vibratory extraction of concrete piles has been measured only for 20-in piles, NMFS has conservatively applied this source level to vibratory extraction of 14-in concrete piles.

For this project, one impact and one vibratory hammer may operate simultaneously. Because an impact hammer is not a continuous source, there is no adjustment needed in the source levels needed to calculate the Level A harassment or Level B harassment zones. In the event of concurrent activities, the Level A harassment zones would be equivalent to those produced by the impact hammer alone, and the Level B harassment zone would be the largest zone. Due to the confined nature of the Project Area, these zones are sometimes identical. Therefore, no separate analysis of concurrent activities was conducted for this project.

TABLE 4—PROJECT SOUND SOURCE LEVELS NORMALIZED TO 10 METERS

Pile type	Pile size (inch)	Method	Peak SPL (re 1 μPa (rms))	RMS SPL (re 1 μPa (rms))	SEL (re 1 μPa (rms))	Source
Concrete	16	Impact	193	168	160	Caltrans 2020.
Concrete	24	Impact	188	176	166	Caltrans 2020.
Fiberglass	16	Vibratory	NA	162	NA	Caltrans 2020.
Concrete or Timber	14	Vibratory extraction	NA	162	NA	NAVFAC SW 2022.

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 like pile driving, 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. The resulting isopleths are reported in Table 5, below.

TABLE 5—CALCULATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Method	Source	Level A harassment—radius to isopleth (m)		Level B Harassment—radius to isopleth (m)
		Phocids	Otariids	
Impact	16-in Concrete	96	7	35
	24-in Concrete	290	22	117
Vibratory	16-in Fiberglass	23	2	* 6,265
	14-in Concrete or Timber	23	2	* 6,265

* The calculated distance to the Level B harassment threshold of 120 dB is 6,265m. However, sound propagation will be limited by the solid breakwaters surrounding the inner harbor and therefore the harassment zone will be limited to the area within the inner harbor breakwaters.

The maximum Level A harassment zones are expected to occur during impact driving of 24-in concrete piles,

extending out to 290 m from the source pile for harbor seals, and out to 22 m from the source pile for sea lions. The

290 m zone fills the inner harbor area surrounded by the breakwaters, as shown in Figure 7 of the IHA

application. The largest Level B harassment zone would occur during vibratory pile driving and extraction, and would encompass the entire inner harbor basin.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information that informs the take calculations, and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur.

California Sea Lion

California sea lions regularly occur on rocks, buoys, and other structures. California sea lions were observed within the Project area during the field survey (Rincon, 2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, California sea lions could occur within the inner harbor area on a daily basis. Past observations indicate that sea lions rarely haul out within the Project area (Meyers, 2022). Because no density estimates are available for the species in this area, the

SMCHD estimated that two California sea lions could be present within the Pillar Point Inner Harbor each day. Based on this information, NMFS has similarly estimated that two California sea lions may be taken by Level B harassment each day of pile driving. This equates to 260 Level B harassment takes over 130 project days. Therefore, the SMCHD requested, and NMFS has authorized, 260 takes by Level B harassment of California sea lion (Table 6).

The largest Level A harassment zone for otariids extends approximately 23 m from the source during impact driving of a 24-in concrete pile (Table 5). SMCHD has conservatively assumed that 1 sea lion may occur within the 23 m zone for a duration long enough to be taken by Level A harassment every 2 days of impact pile driving, equating to 40 takes over 80 project days. Therefore, the SMCHD requested, and NMFS has authorized, 40 takes by Level A harassment of California sea lion (Table 6).

Harbor Seal

Harbor seals were observed within the Project area during the field survey and have been frequently documented within Pillar Point Harbor (Rincon,

2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, harbor seals could occur within the inner harbor area on a daily basis. Past observations indicate that harbor seals rarely haul out within the Project area (Meyers, 2022). Because no density estimates are available for the species in this area, the SMCHD estimated that two harbor seals could be present within the Pillar Point Inner Harbor each day. Based on this information, NMFS has similarly estimated that two harbor seals may be taken by Level B harassment each day of vibratory pile driving, and up to 10 percent of those individuals may be taken by Level A harassment each day. On days with impact driving, up to two harbor seals may be taken by Level A harassment, with no Level B harassment due to the Level A harassment zone extending to the boundaries of the inner harbor. This equates to 90 Level B harassment takes and 170 Level A harassment takes over 130 project days. Therefore, SMCHD requested, and NMFS has authorized, 90 takes by Level B harassment, and 170 takes by Level A harassment of harbor seals (Table 6).

TABLE 6—AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND AS A PERCENTAGE OF STOCK ABUNDANCE

Common name	Stock	Level A harassment	Level B harassment	Total	Percent of stock
California sea lion	United States	40	260	300	0.12
Harbor seal	California	170	90	260	0.84

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.

In addition to the measures described later in this section, SMCHD will employ the following mitigation measures:

- The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant SMCHD staff are trained prior to the start of activities subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation/removal will shut down

immediately if these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures apply to SMCHD's in-water construction activities:

- **Establishment of Shutdown Zones**—SMCHD will establish of 15.25 meter (50-foot) shutdown zone for all pinnipeds during in-water construction activities to avoid interaction between pile driving equipment and pinnipeds. For all marine mammal species other than harbor seals and California sea lions, the shutdown zone will encompass the entire inner harbor. Pile driving must be halted or delayed if a marine mammal is observed entering or within the shutdown zone. The activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

- **Monitoring for Level A Harassment and Level B Harassment**—SMCHD will monitor the Level A harassment and Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of Protected Species Observers (PSOs) will allow PSOs to observe marine mammals within the Level B harassment zones. During pile driving activities, PSOs will monitor the entire inner harbor area and the outer harbor to the extent practicable. A qualified observer will monitor the zone of influence, and document all marine mammals that enter the monitoring zone.

- **Pre/post-activity Monitoring**—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than

30 minutes, the pre-activity monitoring of the shutdown zones will commence. Monitoring must also occur through 30 minutes post-completion of pile driving activity.

- **Protected Species Observers**—The placement of PSOs during all pile driving and removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire inner harbor is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire monitoring zone would not be visible (*e.g.*, fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the monitoring zone could be detected.
- **Soft Start**—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact driving, an initial set of three strikes will be made by the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three-strike sets before initiating continuous driving. Soft-start will 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.

Based on our evaluation of the applicant's mitigation measures, as well as other measures considered by NMFS, 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

Marine mammal monitoring must be conducted in accordance with the Monitoring Plan and Section 5 of the IHA. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used;
 - 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
 - The SMCHD must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.
- 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;
- 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. SMCHD will employ up to two PSOs. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level A harassment and Level B harassment zones as possible. PSO locations may include Johnson Pier, adjacent floating docks, and/or the shoreline area. If necessary, observations may occur from two locations simultaneously; and
- Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall 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 or drilling equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will 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 how many and what type of

piles were driven or removed and by what method (*i.e.*, impact or vibratory and if other removal methods were used) and the total duration of driving time for each pile (vibratory driving/removal) and number of strikes for each pile (impact driving).

- PSO locations during marine mammal monitoring.
- 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.
- Upon observation of a marine mammal, the following information:
 - 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 for each sighting;
 - Estimated number of animals (min/max/best estimate);
 - Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
 - Animal's closest point of approach and estimated time spent within the harassment zone;
 - 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 specific actions that ensued, and resulting changes in behavior of the animal(s), if any.
 - All PSO data will be submitted electronically in a format that can be queried such as a spreadsheet or database and would be submitted with the draft marine mammal report.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be

submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the SMCHD shall report the incident to the Office of Protected Resources (OPR), NMFS, and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the SMCHD must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- 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 both California sea lions and harbor seals, 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 would lead to a different analysis for this activity.

Pile driving activities have the potential to disturb or displace marine mammals. Specifically, the planned project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance and TTS. Level A harassment takes would be due to PTS. No mortality or serious injury is anticipated given the nature of the activity, even in the absence of the required mitigation. The potential for harassment is minimized through the construction method and the implementation of the mitigation measures (see Mitigation section).

Take may occur within a limited, confined area (Pillar Point Inner Harbor) of the stock's range. Level A harassment and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance, and the project is not anticipated to impact any known important habitat areas for any marine mammal species.

Take by Level A harassment is authorized to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment. Any take by Level A harassment is expected to

arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (ABR, 2016)) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Given the limited number of piles to be installed or extracted per day and that pile driving and removal will occur across a maximum of 130 days within the 12-month authorization period, any harassment would be temporary.

Any impacts on marine mammal prey that will occur during SMCHD's activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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 the species

or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized.
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks and will not be of a duration or intensity expected to result in impacts on reproduction or survival.
- No important habitat areas have been identified within the project area.
- For all species, Pillar Point Harbor is a very small and peripheral part of their range and anticipated habitat impacts are minor.
- The SMCHD will implement mitigation measures, such as soft-starts for impact pile driving and shut downs to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment, is at most, a small degree of PTS.

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 finds 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 small numbers of incidental take 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 less 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.

The amount of take authorized for both California sea lions and harbor seals is below one-third of the estimated stock abundance (0.12 percent and 0.84 percent, respectively; Table 6). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will

count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks 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 (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 to result from this activity, and none is authorized. 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 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

As a result of these determinations, NMFS has issued an IHA to SMCHD for the potential harassment of small numbers of California sea lions and harbor seals incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California, between December 1, 2024 and November 30, 2025 that includes the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: July 15, 2024.

Kimberly Damon-Randall,

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

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Public Search Facility User ID and Badging

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 13 during a 60-day comment period (89 FR 41395). This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Public Search Facility User ID and Badging.

OMB Control Number: 0651-0041.

Needs and Uses: The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to make publicly accessible USPTO patent and trademark collections for search and retrieval. The Public Search Facility is located in a publicly accessible portion of USPTO headquarters in

Alexandria, Virginia, and offers the public access to the collection's paper, microfilm, and electronic files and trained staff to assist users with searches.

This information collection covers the application used to establish, renew, or replace security identification badges issued to members of the public who wish to access the Public Search Facility. Users can apply for a security badge in-person at the USPTO Security Office by providing the necessary information and presenting a valid form of photo identification. The issued security badges include a color photograph of the user and must be worn at all times while within the USPTO facility. Issued badges are valid for one year and can be renewed at no cost. Lost badges can be replaced at a cost of \$15. Public users are not required to obtain a security identification badge to access the Public Search Facility. Alternatively, public users can fill out a visitor badge request upon visiting the library. The process for obtaining a visitor badge is exempt from the Paperwork Reduction Act (PRA). The visitor badge must be turned in each time the user leaves the library. Re-entry requires obtaining a new visitor badge. However, using a security identification badge issued to a public user allows that individual to leave and re-enter the library without needing to obtain a visitor badge. Public users only need to obtain either the visitor badge or a security identification badge to enter the Public Search Facility; they do not need both simultaneously.

Previously, the Public Search Facility collected information from the public to establish and maintain accounts for online access to USPTO resources and to register the public for user trainings. Instead of using unique accounts for the Public Search Facility, access is now automatically provided through MyUSPTO accounts. Registrations for training are no longer required as trainings are now provided on demand via self-service online platforms. As a result, the USPTO is removing the information collection lines for online access accounts and user training registrations from this information collection as a part of this renewal.

Previously in the 60-Day **Federal Register** Notice, the USPTO listed the estimated total annual respondent burden as 6 hours. The USPTO now corrects this estimate to 5 hours of annual burden.

Forms:

- PTO Form 2030 (Application for Public User ID)