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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE980

Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Lighthouse Restoration, Maintenance, and Tour Operations at Northwest Seal Rock, Del Norte 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 we have issued an incidental harassment authorization (IHA) to the St. George Reef Lighthouse Preservation Society (Society) to incidentally harass, by Level B harassment only, marine mammals during aircraft operations, lighthouse renovation, light maintenance activities, and tour operations on the St. George Reef Lighthouse Station on Northwest Seal Rock (NWSR) in the northeast Pacific ocean, off Del Norte County, California.

DATES: This Authorization is effective from February 19, 2017 through February 18, 2018.

National Environmental Policy Act (NEPA): NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from the Society's activities. A Finding of No Significant Impact (FONSI) was signed in February 2017. A copy of the EA and FONSI is available on our website at

http://www.nmfs.noaa.gov/pr/permits/incidental/research.html.

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

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq*.) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, 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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 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."

Summary of Request

On October 14, 2016, NMFS received an application from the Society for the taking of marine mammals incidental to restoration, maintenance, and tour operations at St. George Reef Lighthouse (Station) located on NWSR offshore of Crescent City, California in the northeast Pacific Ocean. NMFS determined the application complete and adequate on December 12, 2016.

The Society plans to conduct aircraft operations, lighthouse renovation, and periodic maintenance on the Station's optical light system on a monthly basis. The planned activity will occur on a monthly basis over one weekend, November through April. The Society currently has an IHA that is valid through February 18, 2017. This IHA will start on February 19, 2017, to avoid a lapse in authorization, and will be valid for one year. The following specific aspects of the planned activities would likely to result in the take of marine mammals: acoustic and visual stimuli from (1) helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.*, painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.*, bulb replacement and automation of the light system); and (4) human presence. Thus, NMFS anticipates that take, by Level B harassment only, of California sea lions (*Zalophus californianus*); Pacific harbor seals (*Phoca vitulina*); Steller sea lions (*Eumetopias jubatus*) of the eastern U.S. Stock; and northern fur seals (*Callorhinus ursinus*) could result from the specified activity.

Description of the Specified Activity

Overview

To date, NMFS has issued five IHAs to the Society for the conduct of the same activities from 2010 to 2016 (75 FR 4774, January 29, 2010; 76 FR 10564, February 25, 2011; 77 FR 8811, February 15, 2012; 79 FR 6179, February 3, 2014; and 81 FR 9440, February 23, 2016). This is the Society's sixth request for an annual IHA as their current IHA will expire on February 18, 2017.

The Station, listed in the National Park Service's National Register of Historic Places, is located on NWSR offshore of Crescent City, California in the northeast Pacific Ocean. The Station, built in 1892, rises 45.7 meters (m) (150 feet (ft)) above sea level. The structure consists of hundreds of granite blocks topped with a cast iron lantern room and covers much of the surface of the islet. The purpose of the project is to restore the lighthouse, to conduct tours, and to conduct annual and emergency maintenance on the Station's optical light system.

Dates and Duration

The Society plans to conduct the activities (aircraft operations, lighthouse restoration, and maintenance activities) at a maximum frequency of one session per month. The duration for each session will last no more than three days (*e.g.*, Friday, Saturday, and Sunday). The IHA will be effective from February 19, 2017 through February 18, 2018 with restrictions on the Society conducting activities from May 1, 2017 to October 31, 2017. NMFS refers the reader to the *Detailed Description of Activities* section later in this notice for more information on the scope of the planned activities.

Specified Geographic Region

The Station is located on a small, rocky islet (41°50'24" N, 124°22'06" W) approximately 9 kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (41°46′48″ N; 124°14′11″ W). NWSR is approximately 91.4 m (300 ft) in diameter that peaks at 5.18 m (17 ft) above mean sea level.

Detailed Description of Activities

A detailed description of the Society's project is provided in the **Federal Register** notice for the proposed IHA (81 FR 94326; December 23, 2016). Since that time, no changes have been made to the Society's planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to the Society was published in the **Federal Register** on December 23, 2016 (81 FR 94326). That notice described, in detail, the Society's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission and one private citizen. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Sound Sources and Sound Characteristics

NMFS expects that acoustic stimuli resulting from the helicopter operations; noise from maintenance and restoration activities; and human presence have the potential to

harass marine mammals, incidental to the conduct of the planned activities. A detailed description of the sound sources and sound characteristics were provided in the **Federal Register** notice for the proposed IHA (81 FR 94326; December 23, 2016). Please refer to the **Federal Register** notice for more information.

Description of Marine Mammals in the Area of the Specified Activity

Table 1 provides the following information: all marine mammal species with possible or confirmed occurrence in the activity area; information on those species' regulatory status under the MMPA and the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 *et seq*.); abundance; occurrence and seasonality in the activity area. NMFS refers the public to the draft 2016 NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/* for further information on the biology and distribution of these species.

Table 1 - General information on marine mammals that could potentially haul out on Northwest Seal Rock, November 2015 through November 2016.

Species	Stock	Regulatory Status[1, 2]	Stock Abundance (CV, N_{min}, most recent abundance survey)[3]	PBR	Occurrence and Seasonality
California sea lion (*Zalophus californianus*)	U.S.	MMPA - NC ESA – NL	296,750 (n/a; 153,337; 2011)	9,200	Year-round presence
Steller sea lion (*Eumetopias jubatus*)	Eastern Distinct Population Segment	MMPA - D ESA – DL	60,131 – 74,448 (n/a; 36,551; 2013)	1,645	Year-round presence
Pacific harbor seal (*Phoca vitulina*)	California	MMPA - NC ESA – NL	30,968 (n/a; 27,348; 2012)	1,641	Occasional, spring
Northern fur seal (*Callorhinus ursinus*)	California Breeding	MMPA - D ESA – NL	14,050 (n/a; 7,524; 2013)	451	Rare

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] 2016 draft NMFS Stock Assessment Reports: Carretta *et al*. (2015) and Muto *et al*. (2015).

A detailed description of the of the species likely to be affected by the Society's activities, 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 (81 FR 94326; December 23, 2016); 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 *(www.nmfs.noaa/gov/pr/species/mammals/*) for generalized species accounts.

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

The effects of underwater noise from the Society's activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (81 FR 94326; December 23, 2016) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the in-water construction activities.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the planned activities is the restoration of the Station, which would occur on the upper levels of NWSR, which are not used by marine mammals. Thus, NMFS does not expect that the planned activity will have any effects on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on NWSR. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (81 FR 94326; December 23, 2016); therefore, that information is not repeated here; please refer to that **Federal Register** notice for that information.

Mitigation Measures

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 such activity, "and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking" for certain subsistence uses. 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 such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat (50 CFR 216.104(a)(11)).

Time and Frequency: The Society will conduct restoration activities at a maximum of once per month over the course of the year, with the exception of between May 1, 2017 through October 31, 2017. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

Helicopter Approach and Timing Techniques: The Society will ensure that its helicopter approach patterns to the Station and timing techniques are conducted at times when marine mammals are less likely to be disturbed. To the extent possible, the helicopter will approach NWSR when the tide is too high for the marine mammals to haul out on NWSR. Additionally, since the most severe impacts (stampede) precede rapid and direct helicopter approaches, the Society's initial approach to the Station must be offshore from the island at a relatively high altitude (*e.g.*, 800 - 1,000 ft, or 244 - 305 m).

Before the final approach, the helicopter shall circle lower, and approach from area with the lowest pinniped density. If for any safety reasons (*e.g.*, wind condition) the Society cannot conduct these types of helicopter approach and timing techniques, they must postpone the restoration and maintenance activities for that day.

Avoidance of Visual and Acoustic Contact with People on the Island: The Society will instruct its members and restoration crews to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the Station. Although Coastal Crescent Research (CCR) reported no impacts from these activities in the 2001 CCR study, it is relatively simple for the Society to avoid this potential impact. The door to the lower platform shall remain closed and barricaded to all tourists and other personnel since the lower platform is used at times by pinnipeds.

Mitigation Conclusions

To ensure that the "least practicable adverse impact" will be achieved, NMFS has carefully evaluated mitigation measures in consideration of the following factors in relation to one another: 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, their habitat, and their availability for subsistence uses (latter where relevant); the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation (including, consideration of personnel safety, practicality of implementation).

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels from the activity, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of the activity, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of the Society's planned measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring Measures

In order to issue an incidental take authorization 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 IHAs 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 NMFS expects to be present in the action area.

The Society submitted a marine mammal monitoring plan in Section 13 of their IHA application.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, (*i.e.*, presence, abundance, distribution, and/or density of species).

2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.*, sound or visual stimuli), through better understanding of one or more of the following: the action itself and its environment (*e.g.*, sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.*, life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.*, age class of exposed animals or known pupping, calving or feeding areas).

3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.*, at what distance or received level).

4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: the long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).

5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.*, through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

As part of its IHA application, the Society plans to sponsor marine mammal monitoring, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. These include:

A NMFS approved, experienced biologist will be present on the first flight of each day of activity. This observer will be able to identify all species of pinnipeds expected to use the island, and qualified to determine age and sex classes when viewing conditions allow. The observer will record data including species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the activities, including location, date, and time of the event. In addition, the Society will record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. The Society should complete aerial photo coverage of the island from the same helicopter used to transport the Society's personnel to the island during restoration trips. The Society will take photographs of all marine mammals hauled out on the island at an altitude greater than 300 m (984 ft) by the biologist, on the first

flight of each day of activities. These photographs will be used by the biologist to discern marine mammal species. Data shall be provided to us in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The original photographs can be made available to us or other marine mammal experts for inspection and further analysis.

Monitoring requirements in relation to the Society's planned activities will include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the restoration activities, including location, date, and time of the event. In addition, the Society will record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

The Society can add to the knowledge of pinnipeds in the action area by including the following observations in their annual monitoring report: (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the Society's activities, the Society will suspend survey activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Summary of Previous Monitoring

The Society complied with the mitigation and monitoring required under the previous authorizations (2010-2012). They did not conduct any operations for the 2013-2016 seasons. However, in compliance with the 2012 Authorization, the Society submitted a final report on the activities at the Station, covering the period of February 15, 2012 through April 30, 2012. During the effective dates of the 2012 IHA, the Society conducted one work session in March, 2012. The Society's aircraft operations and restoration activities on NWSR did not exceed the activity levels analyzed under the 2012 authorization. During the March 2012 work session, the Society observed two harbor seals hauled out on NWSR. Both animals (a juvenile and an adult) departed the rock, entered the water, and did not return to the Station during the duration of the activities.

Reporting Measures

The Society will submit a draft report to NMFS' Office of Protected Resources no later than 90 days after the expiration of the IHA. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. The Society will submit a final report to the NMFS within 30 days after receiving comments from NMFS on the draft report. If the Society receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.

2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.

3. An estimate of the number (by species) of marine mammals exposed to human presence associated with the Society's activities.

4. 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.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, stampede), Society personnel shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Assistant West coast Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Society shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with the Society to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Society may not resume their activities until notified by us via letter, email, or telephone.

In the event that the Society discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), the Society will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Assistant West coast Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Society to determine whether modifications in the activities are appropriate.

In the event that the Society discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Society will report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, , and the Assistant West coast Regional Stranding Coordinator within 24 hours of the discovery. Society personnel will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. The Society can continue their survey activities while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, 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).

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of Society personnel could disturb of animals hauled out on NWSR and that the animals may alter their behavior or attempt to move away from the Society's personnel.

NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels two and three (movement and flush) are considered take, whereas level one (alert) is not. Animals that respond to the presence of the Society's restoration 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 to in-air sources to determine take.

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, whereas Level 1 is not.

Based on the Society's previous monitoring reports, NMFS estimates that approximately 2,880 California sea lions (calculated by multiplying the maximum number California sea lions present on NWSR (160) by 18 days of the restoration and maintenance activities), 2,790 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR (155) by 18 days of activity), 108 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by 18 days), and 18 Northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 18 days) could be potentially affected by Level B behavioral harassment over the course of the IHA. NMFS bases these estimates of the numbers of marine mammals that might be affected on consideration of the number of marine mammals that could be disturbed appreciably by a maximum of 18 days of potential activities during the course of the year. These incidental harassment take numbers represent less than one percent of the affected stocks of California sea lions, Pacific harbor seals, and Northern fur seals, and less than five percent of the stock of Steller sea lions (Table 3). However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities.

Table 3. The percentage of stock affected by the number of takes per species.

Species	Take Number	Stock Abundance	Percent of stock
California sea lion (*Zalophus californianus*)	2,880	296,750	0.975
Steller sea lion (*Eumetopias jubatus*)	2,790	60,131 – 74,448	4.64-3.75
Pacific harbor seal (*Phoca vitulina*)	36	30,968	0.35
Northern fur seal (*Callorhinus ursinus*)	18	14,050	0.12

Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area, NMFS does not expect any injury or mortality to pinnipeds to occur and NMFS has not authorized take by Level A harassment for this activity.

Analysis and Determinations

Negligible Impact

Negligible impact' is "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). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population level effects) forms the basis of a negligible impact finding. An estimate of the number of Level B harassment 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 behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Although the Society's survey activities may disturb a small number of marine

mammals hauled out on NWSR, NMFS expects those impacts to occur to a small, localized group of animals for a limited duration (*e.g.*, six hours in one day). Marine mammals would likely become alert or, at most, flush into the water in reaction to the presence of the Society's personnel during the planned activities. Disturbance will be limited to a short duration, allowing marine mammals to reoccupy NWSR within a short amount of time. Thus, the planned activities are unlikely to result in long-term impacts such as permanent abandonment of the area because of the availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the restoration activities and helicopter operations. Results from previous monitoring reports also show that the pinnipeds returned to NWSR and did not permanently abandon haul out sites after the Society conducted their activities.

The Society's activities will occur during the least sensitive time (*e.g.*, November through April, outside of the pupping season) for hauled out pinnipeds on NWSR. Thus, pups or breeding adults will not be present during the planned activity days.

Moreover, the Society's mitigation measures regarding helicopter approaches and restoration site ingress and egress will minimize the potential for stampedes and large-scale movements. Thus, the potential for large-scale movements and stampede leading to injury, serious injury, or mortality is low.

Any noise attributed to the Society's helicopter operations on NWSR will be short-term (approximately six minutes per trip). We expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. As the helicopter landings take place 15 m (48 ft) above the surface of the rocks on NWSR, NMFS presumes that the received sound levels would increase above 81-81.9 dB re: 20

μPa (A-weighted) at the landing pad. However, we do not expect that the increased received levels of sound from the helicopter would cause Temporary Threshold Shift (TTS) or Permanent Threshold Shift (PTS) because the pinnipeds would flush before the helicopter approached NWSR; thus increasing the distance between the pinnipeds and the received sound levels on NWSR during the planned action.

If pinnipeds are present on NWSR, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from NWSR due to the pinnipeds temporarily moving from the rocks and lower structure of the Station into the sea due to the noise and appearance of helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on the island will depart the rock and slowly move into the water upon initial helicopter approaches. The movement to the water would be gradual due to the required controlled helicopter approaches (see *Mitigation Measures* for more details), the small size of the aircraft, the use of noise-attenuating blade tip caps on the rotors, and behavioral habituation on the part of the animals as helicopter trips continue throughout the day. During the sessions of helicopter activity, if present on NWSR, some animals may be temporarily displaced from the island and either raft in the water or relocate to other haul outs.

Sea lions have shown habituation to helicopter flights within a day at the project site and most animals are expected to return soon after helicopter activities cease for that day. By clustering helicopter arrival/departures within a short time period, we expect animals present to show less response to subsequent landings. NMFS anticipates no impact on the population size or breeding stock of Steller sea lions, California sea lions, Pacific harbor seals, or Northern fur seals.

In summary, NMFS anticipates that impacts to hauled-out pinnipeds during the Society's helicopter operations and restoration/maintenance activities would be behavioral harassment of limited duration (*i.e.*, less than three days a month) and limited intensity (*i.e.*, temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality to occur (see *Mitigation Measures* for more details). 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 Society's activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that the Society's planned activities could potentially affect, by Level B harassment only, four species of marine mammals under our jurisdiction. For each species, these estimates are small numbers (less than one percent of the affected stocks of California sea lions, Pacific harbor seals, and Northern fur seals, and less than five percent of the stock of Steller sea lions) relative to the population size (Table 3).

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the Society's activities would take small numbers of marine mammals relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

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

Endangered Species Act (ESA)

NMFS does not expect that the Society's helicopter operations and restoration/maintenance activities would affect any species listed under the ESA. Therefore, NMFS has determined that a Section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from the Society's activities. A Finding of No Significant Impact (FONSI) was signed in February 2017. A copy of the EA and FONSI is available on our website at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.html*.

Authorization

NMFS has issued an IHA to the Society for the potential harassment of small numbers of four marine mammal species incidental to the aircraft operations and lighthouse restoration and maintenance activities on NWSR, in Del Norte County, CA,

provided the previously mentioned mitigation.

Dated: February 13, 2017.

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Donna S. Wieting,

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