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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF366

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central 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 Point Blue Conservation Science (Point Blue) to incidentally harass four species of marine mammals during seabird research activities in central California.

DATES: This authorization is valid from July 7, 2017 through July 6, 2018

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427-8408.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of Point Blue's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: www.nmfs.noaa.gov/pr/permits/incidental/research.htm. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 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 will 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, we adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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).

Summary of Request

NMFS received a request from Point Blue for an IHA to take marine mammals incidental to seabird and marine mammal monitoring at three locations in central California. Point Blue's request was for harassment only and NMFS concurs that mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

On March 7, 2017, NMFS received an application from Point Blue requesting the taking by harassment of marine mammals incidental to conducting seabird research activities on Southeast Farallon Island (SEFI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, plan to conduct the proposed activities for one year. These partners are conducting this research under cooperative agreements with the U.S. Fish and Wildlife Service in consultation with the Gulf of the Farallones National Marine Sanctuary. We considered the application adequate and complete on April 7, 2017.

These proposed activities would occur in the vicinity of pinniped haul-out sites and could result in the incidental take of marine mammals. Species with the expected potential to be present include California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*).

Description of Specified Activities

Overview

We provided a description of the proposed action in our *Federal Register* notice announcing the proposed authorization (82 FR 22504; May 16, 2017). Please refer to that document; we provide only summary information here.

Point Blue proposes to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; and resupply a field station annually in central California (*i.e.*, SEFI, ANI, and PRNS). The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations. Level B take may occur due to incidental disturbance of pinnipeds by researchers during monitoring.

Dates and Duration

The authorization would be effective from July 7, 2017 through July 6, 2018. Surveys are conducted year-round at the specified locations. At SEFI, seabird monitoring sites are visited ~ 1-3 times per day for a maximum of 500 visits per year. Most seabird monitoring visits are brief (~15 minutes), though seabird observers are present from 2-5 hours daily at North Landing from early April to early August each year to conduct observational studies on breeding common murrelets. Boat landings to re-supply the field station, lasting one - three hours, are conducted once every two weeks at one of these locations. At ANI, research is conducted once/week April-August, with occasional intermittent visits made during the rest of the year. The maximum number of visits per year would be 20. Research at PRNS is conducted year round, with an emphasis during the seabird nesting season with occasional intermittent visits the rest of the year. The maximum number of visits per year is 20. Nesting habitat restoration and monitoring activities require sporadic visits from September-November, between the seabird breeding season and the elephant seal pupping season. Landings and visits to nest boxes are brief (~15 minutes).

Specified Geographic Region

Point Blue will conduct their research activities within the vicinity of pinniped haul-out sites in the following locations:

- *South Farallon Islands*: The South Farallon Islands consist of SEFI located at 37°41'54.32" N; 123° 0'8.33" W and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km²)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary;
- *Año Nuevo Island*: ANI is located at 37° 6'29.25" N; 122°20'12.20" W is one-quarter mile (402 meters m) offshore of Año Nuevo Point in San Mateo County, CA. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area; and
- *Point Reyes National Seashore*: PRNS is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to Point Blue was published in the *Federal Register* on May 16, 2017 (82 FR 22504). That notice described, in detail, Point Blue's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received only one comment letter, from the Marine Mammal Commission (Commission). The Commission's recommendations and our responses are provided here, and the comments have been posted online at: www.nmfs.noaa.gov/pr/permits/incidental/construction.htm. Please see the

Commission's letter for background and rationale regarding the recommendations, which are listed below.

Comment: The Commission clarified with NMFS that it should be authorizing, and Point Blue should be reporting, only takes of pinnipeds incidental to conducting the various seabird research and resupply activities. All directed taking to prevent damage to critical infrastructure and to ensure human safety (including moving pinnipeds from paths, parking lots, and boat ramps) should be conducted in accordance with the authorities available under sections 101(a)(4) or 109(h) of the MMPA.

Response: NMFS agrees with this assessment and confirmed that Point Blue will only be only reporting takes that are incidental to seabird research and resupply activities. Directed takes are not authorized and will not be reported under this IHA.

Description of Marine Mammals in the Area of Specified Activities

There are four marine mammal species known to occur in the vicinity of the project area. We reviewed Point Blue's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Section 3 of Point Blue's application as well as our notice of proposed IHA published in the *Federal Register* (82 FR 22504; May 16, 2017). Please also refer to NMFS' Web site (www.nmfs.noaa.gov/pr/species/mammals) for generalized species accounts that provide information regarding the biology and behavior of the marine resources that occur in proximity to the project area.

Table 1 lists all species with expected potential for occurrence at SEFI, ANI, and PRNS and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR, 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, is considered in concert with known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS’s SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats. For status of species, we provide information regarding U.S. regulatory status under the MMPA and the Endangered Species Act (ESA). California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within two km of shore. 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 area. NMFS’s stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock.

All managed stocks in this region are assessed in NMFS’s 2015 U.S. Pacific Stock Assessment Report (Carretta *et al.*, 2016) or the 2015 Alaska Stock Assessment Report (Muto *et al.*, 2016). The most recent information regarding Steller sea lions may be found in 2016 Draft Alaska Stock Assessment Report (Muto *et al.*, 2016b). Four species have the potential to be incidentally taken during the proposed survey activities and are listed in Table 1. Values presented in Table 1 are from the 2015 SARs and draft 2016 SARs (available online at: www.nmfs.noaa.gov/pr/sars/).

Table 1. Marine mammals potentially present in the vicinity of study areas.

Species	Scientific Name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR ³
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California sea lion	<i>Zalophus californianus</i>	U.S.	-; N	296,750 (n/a; 153,337; 2011)	9,200
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	D; Y	71,562 (n/a; 41,638; 2015)	2,498
Harbor seal	<i>Phoca vitulina richardii</i>	California	-; N	30,968 (0.157; 27,348; 2012)	1,641
Northern elephant seal	<i>Mirounga angustirostris</i>	California breeding stock	-; N	179,000 (n/a; 81,368; 2010)	4,882

¹ESA 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.

²CV is coefficient of variation; N_{\min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

³Potential biological removal, 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 size (OSP).

Potential Effects of Specified Activities on Marine Mammals and their Habitat

The effects of seabird researchers at the specified locations have the potential to result in harassment of marine mammals in the vicinity of the action area. The *Federal Register* notice for the proposed IHA (82 FR 22504; May 16, 2017) included a discussion of the effects of Level B harassment on marine mammals. Therefore, that information is not repeated here; please refer to the *Federal Register* notice for that information. No instances of serious injury or mortality are expected as a result of the specified activities.

Estimated Take

This section includes an estimate of the number of incidental "takes" permitted for authorization pursuant to this IHA, which will inform both NMFS' consideration of whether the number of takes is "small" and the negligible impact determination.

Harassment is the only form of take expected to result from these activities. 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).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers and motorboat operations. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. Below we describe how the take is estimated.

NMFS bases these new take estimates on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the same research areas. In brief, for four species (*i.e.*, California sea lions, harbor seals, northern elephant seals, and Steller sea lions), NMFS created a statistical model to derive an estimate of the average annual increase of reported take based on a best fit regression analysis (*i.e.*, linear or polynomial regression) of reported take from 2007 to 2016. Final data from the 2016-2017 season has not been submitted. The predicted annual increase in take for each species was added to the baseline reported take for the 2015-2016 seasons to project the estimated take for the 2017-2018 IHA as is shown in Table 2.

Table 2. Past Reported Take Observations and Estimated Take for 2017-2018 Point Blue Conservation Science Activities.

Species	Reported Take Observations from Past Seasons ¹						Annual Projected Increase	Projected Take 2017-2018 IHA
	IHA 1 (2007-2008)	IHA 2 (2008-2009)	IHA 3 (2011-2012)	IHA 4 (2012-2013)	IHA 5 (2014-2015)	IHA 6 (2015-2016)		
California Sea Lions	744	747	3,610	2,254	4,646	36,397 ²	11,223	40,140 ³ (47,620)
Northern Elephant Seals	44	44	67	30	97	169	34	203
Harbor Seals	39	75	109	141	259	292	107	399
Steller Sea Lions (E-DPS)	5	4	4	12	6	31	5	36

¹Data for 2009-2010 and 2010-2011 not available.

²Large increase in California sea lions likely due to El Niño event.

³NMFS has decreased projected California sea lion take based on preliminary 2016 observed take data.

The estimated take for California sea lions has been reduced from the figure authorized under the 2016-2017 IHA (53,538). NMFS noted that large numbers of California sea lions recorded in 2015-2016 were likely due to an El Niño event, which ended in May/June of 2016. The El Niño Southern Oscillation (ENSO) is a single climate phenomenon that periodically fluctuates between three phases: Neutral, La Niña or El Niño. La Niña and El Niño are opposite phases that require certain changes to take place in both the ocean and the atmosphere, before an event is declared. ENSO is currently in a neutral state, meaning that sea lion numbers may not approach the projected take for 2017-2018 shown in Table 2. Recent data suggests that there are increasing chances another El Niño could develop in the fall of 2017, although it is impossible to predict the length or severity of such an event (NOAA 2017). Therefore, sea lion numbers could occur at levels similar to what was observed in the 2015-2016 season under El Niño conditions.

Point Blue has provided preliminary data for recorded California sea lion takes at SEFI from calendar year 2016 (January-December), which shows 33,904 California sea lion takes at SEFI. Point Blue has not yet tabulated the data for ANI and PRNS. However, Point Blue estimates that approximately 1,000 animals will be taken at ANI and few, if any, will be taken at PRNS based on preliminary analysis of 2016 data. Therefore, the result for calendar year 2016 is approximately 34,904 sea lion takes (33,904 from SEFI and 1,000 from ANI and PRNS). Note that a portion of the 2016 calendar year featured El Niño conditions (January- May/June), which are predicted to return in the fall of 2017. Therefore, the 2016 calendar year data can serve as a baseline for 2017-2018 IHA. NMFS will conservatively add 15 percent to the estimated 2016 yearly total to arrive at an authorized take of 40,140 California sea lions for the 2017-2018 IHA.

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 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. 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 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, we carefully balance 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, which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and; 2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Point Blue has based the mitigation measures, which they will employ during the research, on the implementation of protocols used during previous Point Blue research activities under previous authorizations for these activities. Note that Point Blue and NMFS have refined

mitigation requirements over the years in an effort to reduce behavioral disturbance impacts to marine mammals.

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue will implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede and provide animals opportunity to enter water.

(2) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(3) Avoid visits to sites used by pinnipeds for pupping.

(4) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators.

(5) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(6) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds.

(7) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view.

(8) Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research goals for ANI to minimize the number of trips to the island.

(10) Coordinate monitoring schedules on ANI, so that areas near any pinnipeds would be accessed only once per visit.

(11) Operate motorboats slowly with caution during approaches to landing sites in order to avoid vessel strikes.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the prescribed mitigation measures provide the means 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 in the proposed action area. Effective reporting is critical both to compliance as well as to 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 action; 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.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (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 pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue include the following:

- (1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;
- (2) Composition of the marine mammals sighted, such as species, gender and life history stage (*e.g.*, adult, sub-adult, pup);
- (3) Information on the numbers (by species) of marine mammals observed during the activities;
- (4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.*, pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 3. Note that only observations of disturbance Levels 2 and 3 should be recorded as takes.

Table 3. Levels of Pinniped Behavioral Disturbance.

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 observations of disturbance Levels 2 and 3 are recorded as takes.

This information will be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2017 through December 31, 2017. NMFS has requested that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA's initiation or expiration dates. This will ensure that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report to NMFS Office of Protected Resources by April 1, 2018. The draft report will include monitoring data collected between January 1, 2017 and December 31, 2017. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft

final report will be considered to be the final report. This report must contain the informational elements described above, at minimum.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to NMFS West Coast Region office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue will immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

- (1) Time and date of the incident;
- (2) Description of the incident;
- (3) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (4) Description of all marine mammal observations in the 24 hours preceding the incident;
- (5) Species identification or description of the animal(s) involved;
- (6) Fate of the animal(s); and
- (7) Photographs or video footage of the animal(s).

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

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), Point Blue will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information identified in the paragraph above IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue will report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue will provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

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 responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), 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’s 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 environmental 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 analyses applies generally to the four species for which take is authorized, given that the anticipated effects of these surveys on marine mammals are expected to be relatively similar in nature. Where there are species-specific factors that have been considered, they are identified below.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance that would negatively impact an individual animal’s fitness, or result in injury, serious injury, or mortality. Although Point Blue’s survey activities may disturb marine mammals, NMFS expects those impacts to occur to localized groups of animals at or near survey sites. Behavioral disturbance would be limited to short-term startle responses and localized behavioral changes due to the short duration (ranging from <15 minutes for visits at most locations up to 2-5 hours from April-August at SEFI) of the research activities. At some locations, where resupply activities occur, visits will occur once every two weeks. Minor and brief responses, such as

short-duration startle reactions or flushing, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering. These short duration disturbances - in many cases animals will return in 30 minutes or less - will generally allow marine mammals to reoccupy haul-outs relatively quickly; therefore, these disturbances would not be anticipated to result in long-term disruption of important behaviors. No surveys will occur at or near rookeries as researchers will have limited access to SEFI, ANI, and PRNS during the pupping season and will not approach sites should pups be observed. Furthermore, breeding animals tend to be concentrated in areas that researchers are not scheduled to visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during stampedes.

Level B behavioral harassment of pinnipeds may occur during the operation of small motorboats. However, exposure to boats and associated engine noise would be brief and would not occur on a frequent basis. Results from studies demonstrate that pinnipeds generally return to their sites and do not permanently abandon haul-out sites after exposure to motorboats. The chance of a vessel strike is very low due to small boat size and slow transit speeds. Researchers will delay ingress into the landing areas until after the pinnipeds enter the water and will cautiously operate vessels at slow speeds.

In summary and as described above, the following factors 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 is anticipated or authorized;

- Limited behavioral disturbance in the form of short-duration startle reactions or flushing. Mitigation requirements employed by researchers (*e.g.* move slowly, use hushed voices) should further decrease disturbance levels;
- No activity near rookeries and avoidance of pups; and
- Limited impact from boats due to their small size, maneuverability and the requirement to delay ingress until after hauled out pinnipeds have entered the water.

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 proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals.

As mentioned previously, NMFS estimates that four marine mammal species could potentially be affected by Level B harassment under the authorization. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent approximately 13.5 percent of the U.S. stock of California sea lion, 1.28 percent of the California stock of Pacific harbor seal, 0.11 percent of the California breeding stock of northern elephant seal, and 0.05 percent of the eastern distinct population segment of Steller sea lion. Note that the

number of individual marine mammals taken is assumed to be less than the take estimate (number of exposures) since we assume that the same animals may be behaviorally harassed over multiple days.

Table 4 Population Abundance Estimates, Total Level B Take, and Percentage of Population That May be Taken.

Species	Stock	Stock abundance	Total Level B Take	Percentage of Stock or Population
California sea lion	U.S.	296,750	40,140	13.5
Steller sea lion	Eastern U.S.	71,562	36	0.05
Harbor seal	California	30,968	399	1.28
Northern elephant seal	California breeding stock	179,000	203	0.11

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

Unmitigable Adverse Impact Analysis and Determination

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

Endangered Species Act (ESA)

Issuance of an MMPA authorization requires compliance with the ESA. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore,

NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act (NEPA)

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 with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 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.

Authorization

NMFS has issued an IHA to Point Blue for the potential harassment of small numbers of marine mammals incidental to seabird research activities in central California, provided the previously mentioned mitigation, monitoring and reporting.

Dated: July 5, 2017.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

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