DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC796]

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

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Bureau of Land Management (BLM) for authorization to take marine mammals incidental to construction activities associated with Phase 2 of the Punta Gorda Lighthouse (PGL) Stabilization Project in Humboldt County, CA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1 year renewal that could be issued under certain circumstances and if all requirements are met, as described in **Request for Public Comments** at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Fleming@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. 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.

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 preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

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

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

This proposed IHA would cover the final year of work of a larger project for which BLM obtained a prior IHA. The larger 2-year project involves construction activities to restore all remaining buildings of the Punta Gorda Lighthouse Site.

Description of Proposed Activity

Overview

The PGL was established as an aid to navigation in 1912 along the northern California coast. While in use, the lighthouse station included the lighthouse, oil house, three residences, and numerous other small buildings typical of small military outposts. The U.S. Coast Guard decommissioned the lighthouse in 1951. The BLM assumed management of the site following the PGL's decommission. The concrete lighthouse and

oil house were all that remained when the site was listed in the National Registry of Historic Places in 1976.

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

Dates and Duration

Stabilization and repair of the PGL oil house will occur between June 1 and October 1, 2023. Work crews are expected to work 8 to 10 hours per day, Monday through Friday with intermittent weekend work necessary to meet work schedule objectives, for a total of up to 122 days. The proposed IHA would be valid from June 1, 2023 to October 1, 2023.

Specific Geographic Region

The PGL is located approximately 10 kilometers (km) southwest of Petrolia, California and 18 km south of Cape Mendocino, within the King Range National Conservation Area. The PGL is a remote site situated along the Lost Coast Trail, which extends 40 km (24.8 mi) from the mouth of the Mattole River to Shelter Cove, California and is the longest stretch of undeveloped coastline in California. Vehicle access to the PGL site will originate at the trailhead at the Mattole Campground, and requires traveling across sandy beach that can be limited by high tides. Supplies and demolition material may also be transported to and from the site from the air via helicopter. The oil house sits upon a small hill above a sandy moderately sloped fine-sand beach that is separated by a narrow marine terrace. Pinnipeds are most often found on the beach itself but elephant

seals occasionally use the marine terrace as well. Please see the **Description of Marine Mammals in the Area of Specified Activities** section below for a detailed description of the marine mammals that are known to haul-out at the PGL and surrounding areas.

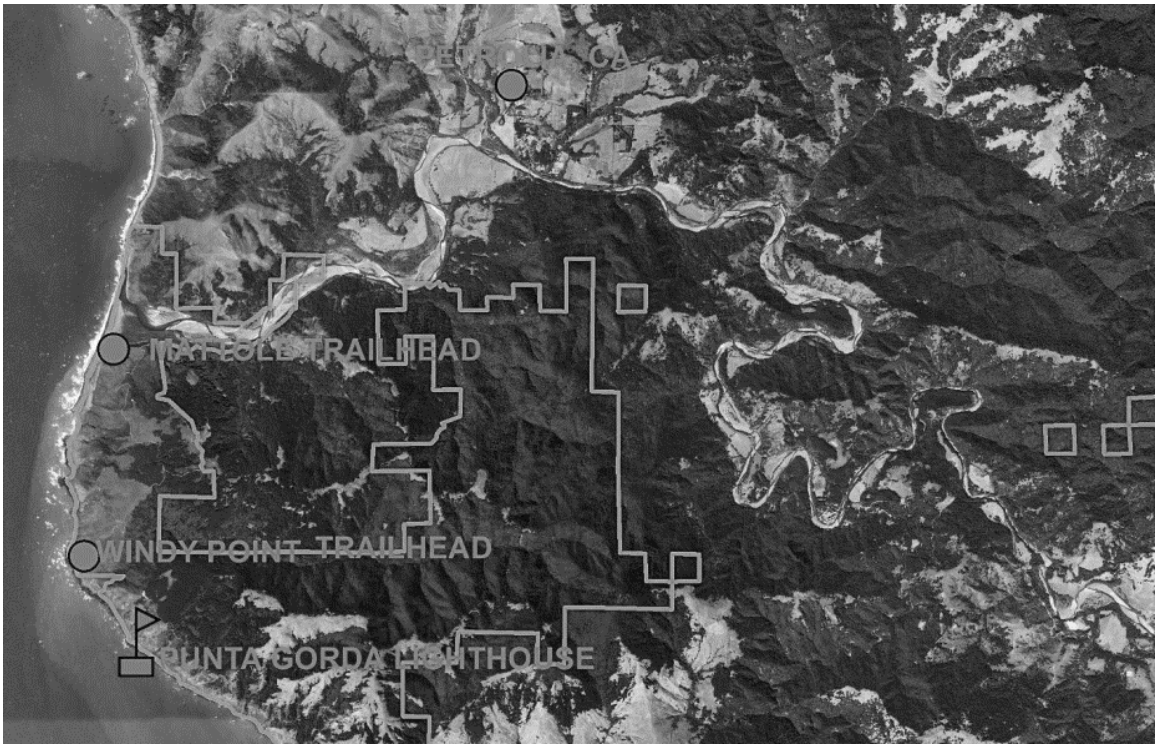

Figure 1. Location of the Punta Gorda Lighthouse in Humboldt County, California

Detailed Description of the Specified Activity

Phase 2 of the PGL stabilization project is comprised of repairs to the oil house; the foundation and walls of the oil house are cracked and separated and the lead-based paint has deteriorated.

The BLM proposed to conduct repair work in stages. As part of the initiation phase, the portion of the marine terrace north of the PGL would be designated and fenced for support of construction activities (*e.g.* parking vehicles, storing tools and materials, fuel storage and containment). A fence would be erected around the staging area and lighthouse station to prevent elephant seals from moving in to the work zone.

The first stage of correcting deficiencies of the oil house would consist of lead paint remediation and demolition of failing concrete and rebar. The remaining structure will be treated to prevent further corrosion. The roof of the oil house will be completely

demolished along with the northwestern corner of the oil house foundation. Numerous other small concrete repairs will occur simultaneously. Gas powered construction saws, jack hammers, heavy equipment (*e.g.* backhoe/excavator) and hand tools will be used to complete the demolition. Following demolition, concrete forms will be erected, new concrete will be poured, and the new structure will be painted with a sealing elastomeric paint (or similar product) to prevent further corrosion.

The site will be accessed by ground vehicles at the Mattole Campground trailhead to the north. The route requires traveling across sand and can be limited by high tides. Supplies will be transported by ground using all-terrain vehicles (ATVs), side-by-side terrain vehicles (UTVs), and heavy equipment. Helicopters may also be used to transport supplies faster than ground transportation would allow. Helicopters would not land at the work site, but would hover approximately 50-100 feet (15-30 m) above ground for a short duration (up to five minutes) while the sling load is disconnected. Additionally, ground vehicles or helicopter lifts may be used to transport demolition debris to waste facilities if not buried on site.

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

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 and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific and Alaska SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*.

Table 1. Species Likely Impacted by the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Steller sea lion	*Eumatopias jubata*	Eastern U.S.	-, -, N	43,201 (N/A, 43,201, 2017)	2,592	112
California sea lion	*Zalophus californica*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	≥321
Family Phocidae (earless seals)						
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013)	5,122	13.7
Pacific Harbor seal	*Phoca vitulina richardii*	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.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

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.

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

California Sea Lion

California sea lions are distributed along the west coast of North America from British Columbia to Baja California and throughout the Gulf of California. Breeding occurs on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2017). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where

they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned, which takes about a year.

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

California sea lions have been observed traveling in the coastal waters and hauled out on offshore rocks near the access route. They are infrequently observed in waters near the proposed project area; During the first year of construction, California sea lions were observed on the offshore rocks and on the beach near the project area on several occasions (BLM 2022).

Steller Sea Lion

The project site could be visited by the eastern distinct population segment (DPS) of Steller sea lion; the eastern DPS includes animals born east of Cape Suckling, AK (144° W), and includes sea lions living in southeast Alaska, British Columbia, Washington, Oregon, and California. Steller sea lion are most typically found in coastal waters on the continental shelf, but they also occur and sometimes forage in much deeper continental slope and pelagic waters. Haulout and rookery sites consist of beaches (gravel, rocky, or sand), ledges, and rocky reefs. They usually return to their natal rookery sites to breed.

Steller sea lions have been observed in the water near PGL and hauled out in offshore rocks near Sea Lion Gulch, which is a haulout site approximately 2.5 km to the south of the project site. A single Steller sea lion was observed on one occasion at PGL during the first year of construction (BLM 2022). Though uncommon, it is reasonably likely that a Steller sea lion could occur at the PGL or along the access route.

Northern Elephant Seal

Northern elephant seals are found in the eastern and central North Pacific Ocean, from as far north as Alaska to as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. While on land, they prefer sandy beaches.

They typically breed and give birth in the Channel Islands off California or Baja California in Mexico, primarily on offshore islands from December to March. In mid-December, adult males begin arriving at rookeries, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately four weeks (Reiter *et al*., 1991). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs in April, when females and immature seals (approximately one to four years old) arrive at the colony to molt (a one-month process) (USFWS 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS 2013). The lowest numbers of elephant seals present at rookeries occurs during June, July, and August, when sub-adult and adult males molt. Another peak number of young seals returns to the rookery for a haulout period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994).

Northern elephant seals colonized the beach below the PGL in 2013 and 2014, and the colony has grown rapidly since then. They haul out on the beach between the intertidal zone and the narrow marine terrace, and occasionally make their way onto the marine terrace or even the Lost Coast Trail. Approximately 165 elephant seal pups were born during the 2020-2021 breeding season, up from 110 the previous year. The highest attendance counted during the 2021 spring molt totaled approximately 700 individuals.

The lowest elephant seal attendance of the year occurs in July and August. Juveniles and non-breeding females start to appear in September before the pregnant females begin arriving in mid-October (Goley *et al.*, 2021).

Harbor Seal

Harbor seals are one of the most common marine mammals along the U.S. West and East Coasts. One the west, coast they are found from Bering Sea to Baja California. They have long been considered non-migratory, typically staying within 15-31 miles of their natal area, though tracking data show they sometimes travel much further distances to exploit seasonally available food or give birth to pups.

Harbor seals mate at sea, and females give birth during the spring and summer. Pupping season varies with latitude. Pups are nursed for 4-6 weeks and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July (Lowry *et al*., 2008).

There are two large harbor seal haulout sites near the PGL, Sea Lion Gulch, and the Mattole River Spit, approximately 6 km to the north. A small group of harbor seals routinely haul-out on the beach near the intertidal zone and on the adjacent rocks below the PGL, approximately 120 m from the oil house. Up to 190 harbor seals have been observed at the PGL (Goley *et al.*, 2021). Harbor seals have haulout site fidelity (Herder, 1986, Yochem *et al.*, 1987, Dietz *et al.*, 2012, Waring *et al.*, 2016) and the seals present at the PGL haulout are likely to be present across multiple days. Although harbor seals commonly use the beach near the PGL for resting throughout the year, only small numbers of pups have been observed in the area and the PGL is not considered a rookery site for harbor seals.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The **Estimated Take** section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The **Negligible Impact Analysis and Determination** section considers the content of this section, the **Estimated Take** section, and the **Proposed Mitigation** section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic and visual stimuli generated by personnel working at the PGL and traversing the beach to access the work site, noise from construction equipment operating at the PGL, and helicopters hovering over the site to transport equipment and supplies may have the potential to cause behavioral disturbance.

Human Presence

The appearance of construction personnel may have the potential to cause Level B harassment of marine mammals hauled-out at the PGL and along the proposed access routes. Disturbance could result in a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the BLM's construction personnel (*e.g.*, turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes. NMFS assumes that pinnipeds that move greater than two body lengths or longer, or if already moving, engage in a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by

Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels 2 and 3 (movement and flush) are considered take, whereas level 1 (alert) is not. Animals that respond to the presence of BLM personnel by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Table 2. Disturbance Scale of Pinniped Responses

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

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

During the first year of construction, Level B harassment to pinnipeds was far less than authorized. Early on, vehicle approaches to PGL disturbed harbor seals, but they quickly appeared to become habituated to the presence of vehicles (BLM 2022). The loudest activities (*e.g.*, driving fence posts, jack hammering, and hammering/grinding on metal), caused the greatest level of disturbance primarily to harbor seals. However, disturbance events were more prevalent during the start of the day as seals seemingly began to habituate to the construction activities as the day progressed. Overall Level B harassment observed was a small fraction of the estimated take authorized (BLM 2022) and while harbor seals were observed both moving and flushing (Levels 2 and 3; Table 2) in response to construction activities, no flushing behavior was observed of elephant seals.

Reactions to human presence, if any, depend on species, state of maturity,

experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al*., 1995; Southall *et al*., 2007; Weilgart 2007). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displace marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g*., Lusseau and Bejder 2007; Weilgart, 2007). Nevertheless, this is not likely to occur during the proposed activities since rapid habituation or movement to nearby haulouts is expected to occur after a potential pinniped flush, as was observed during first year construction activities (BLM 2022).

Disturbances resulting from human activity can impact short- and long-term pinniped haulout behavior (Renouf *et al*., 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al*., 1984; Stewart, 1984; Suryan and Harvey, 1999; and Kucey and Trites, 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al*., 1984; Calambokidis *et al*., 1991; and Suryan and Harvey 1999).

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the 7-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 138 and 371 m, respectively. The authors note that the seals were unaffected by passing powerboats, even those

approaching as close as 39 m, possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). Although no boats would be used in the PGL stabilization project, we expect that hauled-out pinnipeds exposed to the BLM's vehicles and construction equipment would exhibit similar responses to those exposed to boats in the 2007 Acevedo-Gutierrez and Johnson study, and would quickly return to their haulout after the vehicles pass.

Noise

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this proposed rule. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 μPa for under water, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB re: 20 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square is the square root of the arithmetic average of the squared instantaneous pressure values. All references to SPL in this document refer to

the rms unless otherwise noted. SPL does not take into account the duration of a sound. NMFS has developed acoustic thresholds for behavioral disturbance from airborne noise (90 dB for harbor seals and 100 dB for all other pinnipeds; Southall *et al.,* 2007, NOAA 2009).

Demolition and construction work at the PGL would include use of gas powered construction saws, jack hammers, heavy equipment (likely a backhoe or small excavator), saws, and hand tools. Fencing would be erected to prevent marine mammals from entering the work area. Received sound levels for seals hauled out on the beaches below the PGL are not expected to exceed the behavioral disturbance thresholds.

It is possible that the use of helicopters to transport materials, especially the helicopter hovering at the work site while the sling load is disconnected, would cause a subset of the marine mammals hauled-out at the PGL to react. There is little information available on the acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson, *et al.,* 1995) and to NMFS' knowledge, there has been no specific documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions (Baker *et al.,* 2012; Scheidat *et al.,* 2011). The specific type and model of helicopter that may be used for work at the PGL is not yet known, therefore the predicted source level of noise from the helicopter that could be used to estimate distances to the behavioral disturbance threshold is also unknown. However, NMFS has considered that while noise from the helicopter is likely to affect the degree to which marine mammals respond to the stimulus, the physical presence of aircraft could also lead to non-auditory effects on marine mammals involving visual or other cues. Marine mammals in the vicinity of the helicopter are likely to exhibit behavioral responses (*e.g.,* hasty dives or turns, change in course, or flushing and stampeding from a haulout site, as a result of visual detection of the helicopter) regardless of the received SPL.

There are few well-documented studies of the impacts of aircraft overflight over pinniped haulout sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al.,* 2001). Although helicopter flights were proposed in support of year 1 construction activities at PGL, no helicopter flights were implemented. In 2008, NMFS issued an IHA to the USFWS for the take of Steller sea lions and Pacific harbor seals, incidental to rodent eradication activities on an islet offshore of Rat Island, AK conducted by helicopter. The 15-minute aerial treatment consisted of the helicopter slowly approaching the islet at an elevation of over 1,000 ft (304.8 m); gradually decreasing altitude in slow circles; and applying the rodenticide in a single pass and returning to Rat Island. The gradual and deliberate approach to the islet resulted in the sea lions present initially becoming aware of the helicopter and calmly moving into the water. Further, the USFWS reported that all responses fell well within the range of Level B harassment (*i.e.,* limited, short-term displacement resulting from aircraft noise due to helicopter overflights).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al.,* 1995). Bowles and Stewart (1980) observed the effects of helicopter flights over California sea lions and harbor seals observed on San Miguel Island, CA; animals responded to some degree by moving within the haulout and entering into the

water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

In a study of the effects of helicopter landings at the St. George Reef Lighthouse on Northwest Seal Rock off the coast of Crescent City, California, Crescent Coastal Research (CCR) found a range of from 0 to 40 percent of all pinnipeds present on the island were temporarily displaced (flushed) due to initial helicopter landings in 1998. Their data suggested that the majority of these animals returned to the island once helicopter activities ceased, over a period of minutes to 2 hours (CCR, 2001). Far fewer animals flushed into the water on subsequent takeoffs and landings, suggesting rapid habituation to helicopter landing and departure (CCR, 2001).

Stampede

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are particularly injurious when: (1) Animals fall when entering the water at high-relief locations; (2) there is extended separation of mothers and pups; and (3) crushing of pups by large males occurs during a stampede. However, NMFS does not expect any of these scenarios to occur at the PGL as the proposed action would occur outside of the pupping/breeding season for elephant seals and late enough in the harbor seal pupping season that any pups present would likely be old enough to accompany their mother during a flushing event, there are no cliffs at the PGL, and monitoring from IHAs for similar activities at this site and others has not recorded stampeding events (*e.g.,* BLM 2022, Point Blue Conservation Science, 2020; University of California Santa Cruz Partnership for Interdisciplinary Studies of Coastal Oceans, 2021).

The haulout sites at the PGL consist of low sloping sandy beaches with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled-out animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area or increase injury potential. Therefore, NMFS has determined the BLM's proposed activities pose no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations and thus there is no risk that these disturbances will result in Level A harassment or mortality/serious injury.

Anticipated Effects on Marine Mammal Habitat

The primary potential impact to marine mammal habitat associated with the construction activity is the temporary occupation of marine mammal habitat by BLM personnel and equipment but no permanent impacts would occur. The footprint of the PGL station would not change, and although vagrant elephant seals occasionally enter the compound, the lighthouse station itself is not considered to be suitable marine mammal habitat. During the stabilization project, a fence would be erected to exclude a portion of the marine terrace from use by elephant seals. The area expected to be fenced is usually unoccupied during the proposed construction window so few animals are expected to be displaced. Hauled out pinnipeds may temporarily leave the area if disturbed by acoustic or visual stimuli from project activities, but would likely return to the area once activities are concluded. The duration of displacement could vary from minutes, which would be expected for animals disturbed along the access route that may return to the haulout once the construction personnel pass by (*e.g.,* Allen *et al.,* 1985), to hours or days, for animals that flush from the beach below the PGL. The Lost Coast has miles of suitable undeveloped habitat for displaced animals to relocate during construction activities. The direct effects to pinnipeds appear at most to displace the animals temporarily from their haulout sites, and we do not expect, and have not observed during previous authorizations

including first year construction at this site, that the pinnipeds would permanently abandon a haulout site as a result of the PGL stabilization project.

Indirect effects of the activities on nearby feeding or haulout habitat are not expected. Increased noise levels are not likely to affect acoustic habitat or adversely affect marine mammal prey in the vicinity of the project area because source levels are low, transient, well away from the water, and do not readily transmit into the water. It may be necessary for the BLM to bring a fuel storage tank to the PGL site to power generators and heavy equipment. Fuel would be stored behind fencing upland of the beach and the fuel tank would have a secondary containment system in place. To prevent chemical leaks, the BLM would inspect all equipment prior to attempting to cross Four Mile Creek while accessing the worksite. Debris generated by the construction activities (*e.g.,* removed concrete and metal structures) would either be buried onsite or removed by overland transit or helicopter lifts. Any materials not removed would be buried well upland of the beach, far away from any potential haulout areas. Buried material would consist of existing elements of the oil house, no new materials would be introduced and left behind. NMFS does not expect that the proposed activities would have any long- or short-term physical impacts to pinniped habitat at the PGL.

Estimated Take

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

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal

stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to construction personnel and equipment, including helicopters used to transport materials. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. For the BLM's proposed activities, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses (Table 2).

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

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Researchers from Humboldt State University (HSU) regularly conduct census counts of pinnipeds at the PGL and surrounding areas along the northern California coast (*e.g.,* Goley *et al.*, 2021, BLM 2022). Protected Species Observers (PSOs) on site during the first year of construction recorded daily counts as well. Counts of northern elephant seals, harbor seals, California sea lion, and Steller sea lion at the PGL during the effective dates of the proposed IHA (June 1 through October 1) are presented below.

Table 3. Pinniped Census Counts at Punta Gorda Lighthouse

Date	Number of elephant seals observed	Number of harbor seals Observed*	Number of California sea lions observed*	Number of Steller sea lions observed*
2019 Counts				
June 8	101	51	-	-
June 15	74	107	-	-
June 23	34	81	-	-
July 7	40	116	-	-

July 14	50	180	-	-
July 21	54	123	-	-
August 3	39	105	-	-
August 21	44	80	-	-
August 31	62	22	-	-
September 15	162	22	-	-
September 27	244	28	-	-
2020 Counts				
June 4	177	-	-	-
June 11	83	-	-	-
June 14	80	55	-	-
June 24	37	-	-	-
June 27	38	77	-	-
July 4	36	-	-	-
July 12	39	90	-	-
July 16	38	-	-	-
July 24	36	123	-	-
July 30	38	-	-	-
August 6	32	-	-	-
August 9	28	73	-	-
August 13	28	-	-	-
August 20	27	-	-	-
August 27	33	-	-	-
August 30	48	36	-	-
September 5	60	38	-	-
September 19	133	51	-	-
September 27	177	53	-	-
2021 Counts				
June 10	199	-	-	-
June 29	59	109	-	-
July 10	48	128	-	-
July 26	34	104	-	-
August 7	30	103	-	-
August 22	42	68	-	-
September 2	106	-	-	-
September 16	135	-	-	-
2022 Counts				
June 22	39	42	0	0
June 23	53	50	0	0
June 24	34	117	0	0
June 25	50	110	0	0
June 27	38	150	0	0
June 28	61	126	0	0
June 29	54	132	0	0
June 30	56	169	0	0
July 1	52	137	0	0
July 5	48	156	0	0
July 6	51	142	0	0
July 7	34	-	0	0
July 8	33	121	0	0
July 9	56	141	0	0
July 11	28	106	0	0
July 12	37	139	0	1
July 13	38	156	0	0

July 14	34	190	0	0
July 15	37	134	0	0
July 16	30	136	0	0
July 18	29	114	0	0
July 19	30	108	0	0
July 20	25	122	0	0
July 21	27	99	0	0
July 22	32	109	0	0
July 23	31	109	0	0
July 25	29	115	0	0
July 26	33	93	0	0
July 27	30	58	0	0
July 28	29	91	0	0
July 29	33	73	0	0
August 1	31	82	0	0
August 2	28	76	0	0
August 4	32	77	0	0
August 5	28	105	2	0
August 6	29	72	0	0
August 8	26	71	0	0
August 9	27	55	10	0
August 10	28	48	7	0
August 11	32	41	0	0
August 12	38	56	0	0
August 15	34	46	0	0
August 16	40	56	3	0
August 17	42	61	0	0
August 18	44	50	0	0
August 19	42	64	0	0
August 20	39	56	0	0
August 22	40	57	7	0
August 23	48	58	6	0
August 24	48	60	0	0
August 25	54	59	0	0
August 26	51	48	0	0
August 27	54	38	0	0
August 29	65	37	0	0
August 30	57	51	1	0
August 31	46	49	0	0
September 1	60	41	0	0
Daily Average	52.4	87.4	0.6	0.02

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

Between 2019 and 2022, census counts of elephant seals and harbor seals were collected at PGL during the effective dates of the proposed IHA (June 1 – October 1). Across all 4 years, the average daily count was 52.4 elephant seals (Goley *et al.,* 2021, BLM 2022). A large proportion of the elephant seals present at PGL are uniquely tagged and dye stamped to identify individuals and the same individuals were identified at the PGL haulout on multiple days. Across all four years, the daily average of harbor seals

was 87.4. The harbor seals present at the PGL are not tagged or otherwise clearly identifiable, but since harbor seals typically show hauling site fidelity (Herder 1986, Yochem *et al.*, 1987, Dietz *et al.,* 2012, Waring *et al.*, 2016), researchers from HSU hypothesize that the harbor seal colony at the PGL is made up of the same individuals that move between Punta Gorda and other nearby haulouts.

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

Take Estimation

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

To estimate the total number of pinnipeds that may be present at the PGL and subject to behavioral disturbance from the PGL stabilization project, the BLM multiplied the daily count of each species averaged across all years of available census data (52.4 elephant seals, 87.4 harbor seals, 0.6 California sea lions, and 0.02 Steller sea lions) by the maximum days of work at the PGL (122 days), for an estimated total take events of 6,393 for northern elephant seals, 10,663 for harbor seals, 73 for California sea lions, and 2 for Steller sea lions) taken by Level B harassment. This estimation assumes that all animals present would exhibit behavioral responses that are considered take (Levels 2 and Level 3 as described in Table 2). As described above, many of the seals present at the PGL are suspected or confirmed to be present across multiple days. Therefore, the above estimated take numbers are considered to represent instances of take, not necessarily the number of individual seals that may be taken. In the case of Steller sea lion, 2 takes may not adequately account for all instances of possible take that could occur should multiple

individuals enter the project area over the course of construction, or one individual enter the project area on multiple occasions. As such the take estimate for this species has been increased to 30 as requested by the applicant.

Table 4. Proposed Take by Level B Harassment by Species and Percentage of Each Stock Affected

Species	Stock	[a]Proposed take by Level B harassment	Stock Abundance	Percent of Stock
Northern elephant seal	California breeding	6,393	187,386	3.4
Pacific harbor seal	California	10,663	30,968	34.4
California sea lion	U.S.	73	257,606	0.03
Steller sea lion	Eastern U.S.	30	77,149	0.04

[a] The proposed take represents the estimated number of instances of take, which does not equate to the number of individuals that may be taken.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The following mitigation measures are proposed:

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

To the extent possible, the BLM would limit the daily number of vehicle trips between the project area and the contractor's offshore camp where additional tools and supplies would be stored in trailers or other storage containers.

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

they should travel in a convoy such that animals are not potentially harassed more than once while the vehicles pass.

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

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

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

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

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed 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.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to

compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

At least one NMFS-approved PSO would travel to and from the construction site ahead of the work crew each day and serve as a lead monitor to record incidental take. PSOs would consist of BLM wildlife biologists, biological technicians, and interns, as

well as King Range National Conservation Area staff. At least one PSO would monitor the beach surrounding the PGL during all construction activities.

PSOs should have the following qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number of species of marine mammals observed; dates and times when construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammal observed in the area when necessary.

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

- Date, time, and access route of each visit to the work site;
- Information on the weather, including tidal state and estimated horizontal visibility;
- Composition of marine mammals observed, such as species, sex, and life history stage (*e.g.*, adult, sub-adult, pup);
- Estimated numbers (by species) of marine mammals observed during the activities;
- Location of marine mammals observed during construction activities.

- Marine mammal disturbances according to a three-point scale of intensity (see Table 2)
- Behavioral responses or modifications of behaviors that may be attributed to the specific activities, a description of the specific activities occurring during that time (*e.g.*, pedestrian, vehicle, or helicopter approach), and any mitigation action taken; and
- Note the presence of any offshore predators (date, time, number, and species).

Reporting

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

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of each work season, or 60 days prior to the requested issuance date of any future IHAs for projects at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS on the draft report, the draft report will be considered the final report. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings and behavioral response to construction activities, and associated PSO data sheets.

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

- Dates, and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period such as supply transport via ground and/or helicopter, fence installation, trail maintenance, and demolition etc.;

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

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

- Name of the PSO who completed the observations and PSO location and activity at the time of recording;
- Time of observation;
- The number (by species) of marine mammals observed during the activities, by age and sex, if possible, and distances to construction activities. Data may be reported according to groups in cases where animals are concentrated together;
- The behavioral response of marine mammals (by species, age, and sex as possible) to construction activities based on the 3 point scale (Table 2), including distances to construction activities and descriptions of construction activities occurring at the time of observance. When pinnipeds are concentrated in groups, closest distance of the group to construction activities may be reported;
- A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

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

Reporting Injured or Dead Marine Mammals

In the event that the BLM or any other personnel involved in the activities discover an injured or dead marine mammal, the BLM would report the incident to the NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury were clearly caused by a specific activity, the BLM would 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 BLM would 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 of the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact

determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

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

No injuries or mortalities are anticipated to occur as a result of the PGL stabilization project and none are proposed to be authorized. The risk of marine mammal injury, serious injury, or mortality associated with the proposed construction project increases somewhat if disturbances occur during pupping season. These situations present

increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.,* through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. However, the proposed activities would occur outside of the elephant seal pupping season, therefore no elephant seal pups are expected to be present. Although the timing of the proposed activities would partially overlap with harbor seal pupping season, the PGL is not a harbor seal rookery and few pups are anticipated to be encountered during the proposed construction. In fact, the daily average of harbor seal pups present at PGL during 2022 construction (June 22 – September 1) was just 1.7. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. The proposed activities would occur late enough in the pupping season that any harbor seal pups present would likely be old enough to keep up with their mother in unlikely event of a stampede or other flushing event. The proposed mitigation measures (*i.e.,* minimum separation distance, slow approaches, and minimizing vehicle trips to the PGL) generally preclude the possibility of behaviors, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities including phase1 construction at this site, will likely be limited to reactions such as alerts or movements away from the lighthouse structure, including flushing into the water. Most likely, individuals will simply move away from the acoustic or visual stimulus and be temporarily displaced from the areas. In fact, during the first year of construction at PGL elephant seals were not observed flushing at any point during construction and were only observed moving on 11 occasions. Harbor seals were observed flushing 255 times and

moving 322 times, which represents a small fraction (6%) of the Level B harassment authorized for the project (BLM 2022).

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

Of the marine mammal species anticipated to occur in the proposed activity areas, none are listed under the ESA and there are no known areas of biological importance in the project area. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary displacement from haulout sites. The Lost Coast area has abundant haulout areas for pinnipeds to temporarily relocate, and marine mammals are expected to return to the area shortly after activities cease. No adverse effects to prey species are anticipated as no work would occur in-water, and habitat impacts are limited and highly localized, consisting of construction work at the existing lighthouse station and the transit of vehicles and equipment along the access route. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and

taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from the BLM's PGL stabilization project will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

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

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily 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 previously, only take of small numbers of marine mammals 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 fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

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

haulouts. This is based on the fact that this species typically shows hauling site fidelity (Herder 1986, Yochem *et al.,* 1987, Dietz *et al.,* 2012, Waring *et al.,* 2016). Therefore, many individuals that may be taken by Level B harassment are likely to be the same across consecutive days, despite PSOs counting them as separate takes throughout the duration of the project.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily 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 would 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, in this case with the West Coast Regional Office.

No incidental take of ESA-listed species is proposed for authorization 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.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the BLM for conducting Phase 2 of the PGL Stabilization Project repair in Humboldt County, California between June 1 and October 1, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the **Description of Proposed Activities** section of this notice is planned or (2) the activities as described in the **Description of Proposed Activities** section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of

the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: March 16, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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