



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD056]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project

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 California Department of Transportation (Caltrans) for authorization to take marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, 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.cockrell@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 *<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>* 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.

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 below.

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

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical

region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

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

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 December 28, 2022, NMFS received a request from Caltrans for an IHA to take marine mammals incidental to construction activities to restore portions of the Richmond-San Rafael Bridge. Following NMFS' review of the application, Caltrans submitted a revised version on April 14, 2023, which was deemed adequate and complete on May 11, 2023. Caltrans' request is for take of harbor seals (*Phoca vitulina*) by Level B harassment only. Neither Caltrans nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Caltrans would conduct construction activities to restore a portion of the Richmond-San Rafael Bridge. Prior to restoration work Caltrans would install a debris containment system to ensure contaminants from construction are not deposited into San Francisco Bay. During the deployment and retrieval of the containment system disturbance (*i.e.*, Level B harassment) of harbor seals may occur. Once the debris containment system is deployed the restoration work on the bridge is not expected to result in any takes of marine mammals, as the containment system is expected to shield seals from disturbance as a result of visual and acoustic stimuli. Takes of harbor seals would occur at the nearby Castro Rocks haulout. The Richmond-San Rafael Bridge is located in the northern portion of San Francisco Bay and is located between Richmond, CA and San Rafael, CA. The debris containment system would be used on Piers 52-57 and the proposed action area is approximately 3.5 square miles (9.2 square kilometers). Work on the bridge would be conducted throughout the year once the debris containment system is in place. The deployment and retrieval of the containment system would only

occur during between August 1 and March 30 to avoid pupping and molting seasons of harbor seals.

Dates and Duration

The proposed IHA would be effective from August 1, 2023 to March 30, 2024. It is expected that the debris containment system would take up to 20 days to deploy and 10 days to remove (30 total days). The debris containment system would only be deployed during daylight hours but restoration work would occur throughout the day and night following deployment.

Specific Geographic Region

Located in the northern reaches of San Francisco Bay, the eastern portion of Richmond-San Rafael Bridge is surrounded by the industrial complex of the Chevron Richmond Refinery. Castro Rocks is an important haulout location for harbor seals in San Francisco Bay. The nearest outcropping of Castro Rocks, where harbor seals are known to haulout, is located approximately 21.3 meters (m) from Pier 55, and the farthest outcropping is located approximately 145 m from Pier 52.

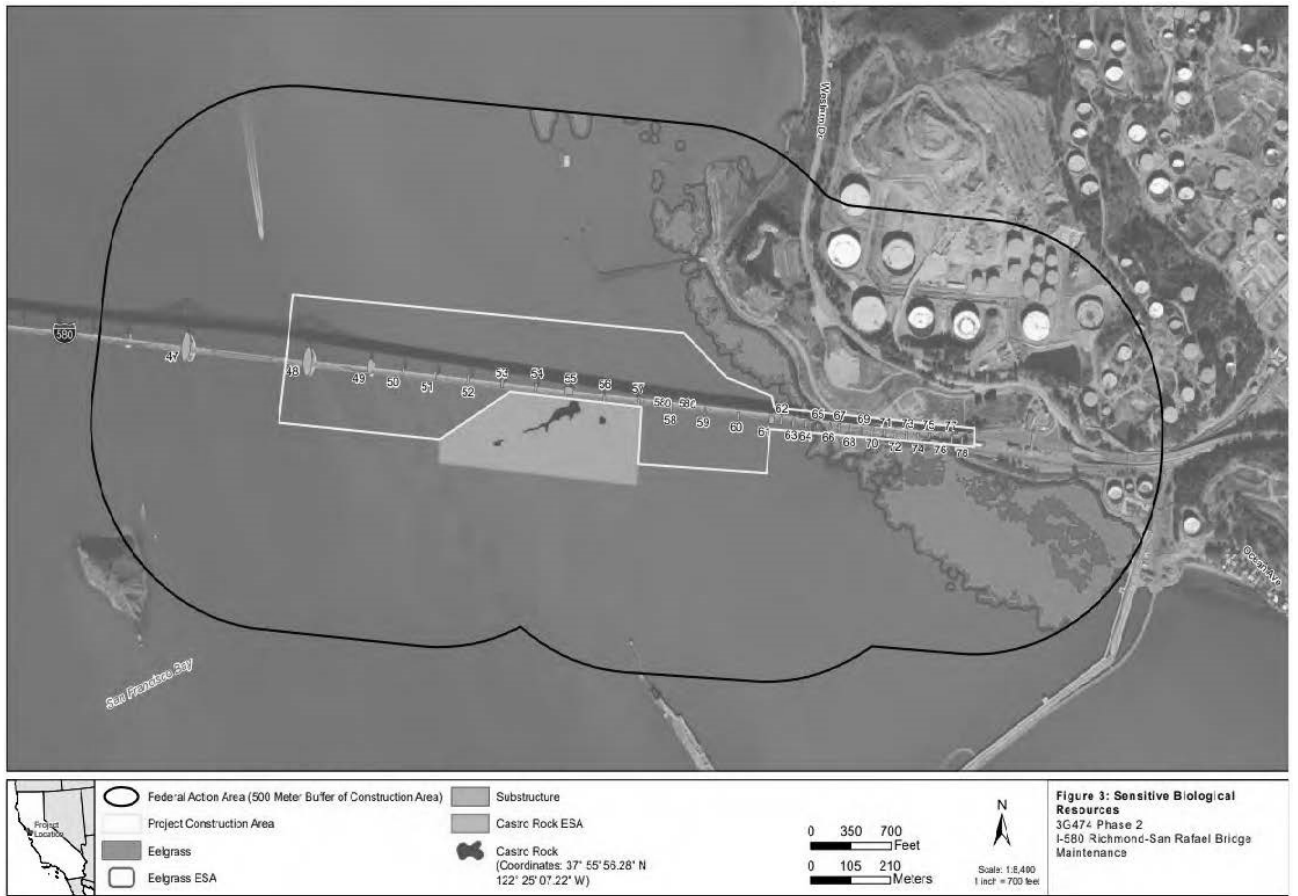


Figure 1 -- Project Location of the Richmond-San Rafael Bridge

Detailed Description of the Specified Activity

The restoration improvements to the Richmond-San Rafael Bridge include sandblasting, cleaning, and painting of the upper and lower deck and repair of the road deck and expansion joints on the lower deck. To remove the existing paint from the bridge sandblasting and rotary sanding would be completed using compressed air and power sanders. Primer and paint would then be applied using a pneumatic paint sprayer. All of the paint removal and painting work would rely on a generator and an air compressor from a barge on the north side of the bridge.

Localized spalled road deck concrete would be repaired and damaged concrete will be removed using pneumatic air chisels. All exposed rebar would be sandblasted prior to placement of new structural concrete in the spalled area. Bridge joints would be replaced on the lower deck of the bridge. Replacement of the bridge joints would involve concrete saws to remove the old joint.

All of these activities have the potential to emit sound in the vicinity of Castro Rocks. Although sound would be produced by the construction activities, the deployment of a debris containment system would attenuate the sound and block any visual disturbance from reaching Castro Rocks. All construction activities would be conducted within the debris containment system. As such, the deployment and removal of the debris containment system is expected to be the only activity that would result in takes of harbor seals hauled out at Castro Rocks. The visibility of workers in the project area during the installation and removal of the debris containment system would likely cause behavioral reactions such as flushing from the haul-out, not hauling out, head alerts, or moving farther from the disturbance to forage.

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 in materials that are referenced in the document, 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. All managed stocks in this region are assessed in NMFS'

Pacific SARs, and NMFS has reviewed the most current information for the species. All values presented in Table 1 are the most recent available at the time of publication and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

Table 1. Species Likely Impacted by the Specified Activities

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora – Pinnipedia						
<i>Family Phocidae (earless seals)</i>						
Harbor seal	<i>Phoca vitulina</i>	California	N	30,968 (N/A, 27,348, 2012)	1,641	43

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

2 - NMFS marine mammal stock assessment reports online at: <https://www.nmfs.noaa.gov/pr/sars/>. CV is coefficient of variation; N_{min} 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, harbor seals temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While California sea lions, Steller sea lions, northern elephant seals, northern fur seals, harbor porpoise, bottlenose dolphins, gray whales, and humpback whales have been documented in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. For pinnipeds in the aforementioned list, there are no other documented haulouts close to the project area. Since no in-water work is proposed there would be no effects on these species potentially present in the water during this work. For the cetacean species listed

above, no take is expected for those species due to the lack of in-water work planned for this project.

Harbor Seal

Pacific harbor seals are distributed from Baja California north to the Aleutian Islands of Alaska. Seals primarily haulout on remote mainland and island beaches, reefs, and estuary areas. At haulouts, they will congregate to rest, socialize, breed, and molt. Haulouts are relatively consistent from year to year (Kopec and Harvey, 1995), and females have been documented to return to their own natal haulout when breeding (Green *et al.*, 2006).

The Pacific harbor seal population experienced an increase from 1981-2004, followed by a steady decrease from between 2005-2010. The maximum statewide count showed that the California stock sharply declined in 2009 and 2012 (Duncan 2019). Caltrans conducted extensive marine mammal surveys in San Francisco Bay before and during seismic retrofit on the Richmond-San Rafael Bridge from 1998-2002. Caltrans determined that a minimum of 500 harbor seals occur within San Francisco Bay (Green *et al.*, 2002), an estimate that agrees with more recent seal counts (Lowry *et al.*, 2008; Codde *et al.*, 2020). The California harbor seal stock may be stabilizing at or near carrying capacity, although conservation concerns such as vessel strikes, disturbance, fishing gear entanglement, and habitat loss are still a concern in the San Francisco Bay area (Duncan 2019).

The nearest major haulout site to the project area is Castro Rocks, located approximately 21.3 meters from Pier 55 of the bridge, and the farthest outcropping is located approximately 145 meters from Pier 52 of the bridge. Use of Castro Rocks as a haulout site has been increasing over the years (Codde *et al.*, 2020). Given the close proximity of Castro Rocks to the project area it is likely seals would be present on the rocks during construction. There are also smaller numbers of harbor seals have also been

reported to haulout on the western Brother Island, approximately 3.35 kilometers to the north of the bridge.

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 of Marine Mammals** 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 of Marine Mammals** 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.

The visual stimuli generated by the deployment and removal of the debris containment system has the potential to cause Level B harassment of pinnipeds hauled out at Castro Rocks. This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (personnel presence while assembling the containment system) have been observed to impact marine mammals.

The appearance of personnel may have the potential to cause Level B harassment of any harbor seals hauled out at Castro Rocks during the time of installation or removal of the debris containment system. Disturbance may result in reactions from harbor seals ranging from becoming alert to the presence of personnel (*e.g.*, turning the head, assuming a more upright posture) to flushing from the haulout site into the water or not hauling out at all. NMFS does not consider the lesser reactions to constitute behavioral harassment, or takes by Level B harassment. NMFS rather assumes that harbor seals that flee some distance or change the speed or direction of their movement in response to the

presence of personnel are behaviorally harassed, and thus subject to take by Level B harassment. Animals that respond to the presence of workers 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.

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. However, NMFS does not expect this to occur at the project area. Caltrans will take precautions, such as establishment of a non-disturbance buffer within 400 feet (121 meters) of Castro Rocks on the south side of bridge, steering watercraft so as not to approach marine mammal haulout sites, and a requirement that watercraft maintain a slow steady speed when passing by Castro Rocks. Furthermore, the debris containment system would be installed outside of the pupping and molting season to ensure no impacts to pups at Castro Rocks.

Monitoring efforts from a 2001 seismic retrofit project at the same site found that on average there were 0.16 construction related disturbance events (flushes) per hour of field time caused by construction related disturbances during daytime monitoring at Castro Rocks (Green *et al.*, 2004). Construction-related disturbances at Castro Rocks consisted of two main factors: watercraft in the area of the haulout site and construction activities including jackhammering, rivet work, and the movement of cranes on barges near the haulout site (Green *et al.*, 2004). Construction noise and activity from this project are considerably less than the seismic retrofit project due to the lack of jackhammering, rivet work and construction activities at water level. Once the scaffolding and debris containment system is installed on the lower bridge deck, the work area will be screened, and take by Level B harassment due to ongoing construction activities inside the containment system is not anticipated.

Given the nature of the proposed activities (*i.e.*, installation and removal of the debris containment system) in conjunction with proposed mitigation measures, NMFS is confident that any anticipated effects would be in the form of behavioral disturbance only. NMFS considers the risk of injury, serious injury, or mortality to marine mammals to be extremely unlikely.

There are no habitat modifications associated with the proposed activity. The debris containment system, construction waste, or watercraft (including barges) would not make contact with Castro Rocks. Thus, NMFS does not expect that the proposed activity would have any effects on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on Castro Rocks.

Estimated Take of Marine Mammals

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 the novel stimulus of the installation and removal of the debris containment system. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

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 and Take Estimates

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information, which will inform the take calculations. We will also describe how this information is brought together to produce a quantitative take estimate for each species.

Castro Rocks is the largest harbor seal haulout site in northern San Francisco Bay and is the second largest pupping site in San Francisco Bay (Kopec and Harvey 1995). The harbor seal pupping season is from April to July in San Francisco Bay. Seals are present on the haulout year round during medium to low tides (Green *et al.*, 2004). Recent observations at the Castro Rocks haulout site reported approximately 300 seals during the pupping and molting seasons (Codde and Allen, 2020). The highest mean number of harbor seals observed at Castro Rocks during recent annual National Park Service surveys was 237 seals observed in 2019 (Codde and Allen, 2013, 2015, 2017, 2020; Codde 2020).

Caltrans expects to harass approximately 300 harbor seals per day during the installation and removal of the debris containment system. It is expected to take 30 days for Caltrans to complete this process. Based on these assumptions Caltrans requested authorization of 9,000 takes by Level B harassment of harbor seals while hauled out. NMFS concurs with this request.

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.

Mitigation for Marine Mammals and Their Habitat

Caltrans proposes to implement the following measures during Phase II of the Richmond-San Rafael Bridge Restoration Project:

(1) Seasonal Work Restrictions: installation or removal of the debris containment system must not occur between Piers 52-57 from April 1-July 31 due to the pupping and molting period of harbor seals.

(2) Work must not take place outside of the containment system on the bridge between Piers 52-57 from April 1 to July 31.

(3) A non-disturbance buffer will be established within 400 feet (121 meters) of Castro Rocks on the south side of bridge.

(4) Staging of barges will not be allowed in the project area.

(5) Routes for watercraft to reach work locations would be predetermined in consultation with the project biologist to avoid harassment or take of marine mammals hauled out at Castro Rocks.

(6) No piles may be driven or vibrated to create staging locations for any watercraft. Barges and vessels would be tethered to the existing concrete bridge piers.

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.

Caltrans will monitor to collect data on marine mammal behavior, counts of the individuals observed, and the frequency of the observations. Caltrans will collect sighting data and observations on behavioral responses to construction for marine mammal species observed in the region of activity during the period of construction. All observers will be trained in the identification of marine mammals and marine mammal behaviors.

- Protected species observers (PSOs) must be independent observers (*i.e.*, not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of

marine mammals and their behaviors. Caltrans must submit their resumes to NMFS for approval;

- Biological monitoring must occur 5 days prior to the Project's start date, to establish baseline observations.
- Observation periods will encompass different tide levels and hours of the day. Monitoring of marine mammals around the construction site will be conducted using binoculars as necessary.
- The proposed location of the PSOs will be at a monitoring platform positioned on Pier 55 of the Richmond-San Rafael Bridge, at the closest pier of the Richmond-San Rafael Bridge to Castro Rocks. Pier 55 is approximately 21 meters from the nearest rock at Castro Rocks harbor seal colony.

Data Collection

Caltrans will record detailed information about counts and behaviors of all marine mammal species observed, times of observations, construction activities that occurred, any visual disturbances, and weather conditions, with particular focus on harbor seals at Castro Rocks. PSOs will use approved data forms to record the following information:

- Observation position and start and end times of observations;
- Weather conditions (sunny/cloudy, wind speed, fog, visibility), temperature, tide level, current, and sea state;
- Species counts (including with or without pup, and, if possible, sex and age classes of any observed marine mammal species);
- Identifying marks or color (scars, red pelage, *etc.*);
- Position relative to Richmond-San Rafael bridge (distance and direction);
- Movement (direction and relative speed);
- Behavior (logging (resting at the surface), swimming, spyhopping (raising above the water surface to view the area), foraging, *etc.*);

- Duration of sighting or times of multiple sightings of the same individual;
- and
- Details of any marine mammal behavioral disturbances, including information regarding the activity (e.g. disturbance from the containment system installation and removal or construction related disturbance within or outside the containment system), the type of behavioral response to the disturbance (flushing or head posturing), and the rate of disturbance on Castro Rocks. Disturbance events must be categorized according to the 3-point scale as shown in Table 2.

Table 2 -- 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.

Reporting Measures

Caltrans shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:

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

- Construction activities occurring during each daily observation period including: (a) what type of restoration work is being completed, and (b) the total duration of work completed;

- PSO locations during monitoring; and

- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;

- Time of sighting;

- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), and PSO confidence in identification;

- Distance and location of each observed marine mammal relative to the bridge restoration work;

- Estimated number of animals by species (min/max/best estimate);

- Estimated number of animals by cohort (adults, pups, and group composition, *etc.*);

- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as flushing or head posturing); and

- Detailed information about implementation of any mitigation measures, a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Caltrans would immediately cease the specified activities and immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*) and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved (if applicable);
- Vessel's speed during and leading up to the incident (if applicable);
- Description of the incident;
- Status of all sound source used in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Caltrans to determine necessary actions to minimize the likelihood of further prohibited take and ensure MMPA compliance.

Caltrans would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Caltrans discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as described in the next paragraph), Caltrans would immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the same information identified in the section above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Caltrans to determine whether modifications in the activities are appropriate.

In the event that Caltrans discovers an injured or dead marine mammal, and the lead PSO determines 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), Caltrans would report the incident to Office of Protected Resources, NMFS, and West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Caltrans would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Construction activities would be permitted to continue.

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).

NMFS does not expect Caltrans’ construction 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 the installation and deployment of the debris containment system may disturb harbor seals hauled out at Castro Rocks, NMFS expects those impacts to be of short duration (20 days for installation and 10 day for removal) with minimal effect to the animals. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

The harbor seal stock for which incidental take authorization is proposed is not listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The proposed mitigation and monitoring measures, including the establishment of seasonal work schedules, a non-disturbance buffer around Castro Rocks, and watercraft routes, would minimize disturbance of seals on Castro Rocks and make Level A harassment unlikely. Therefore, the proposed mitigation and monitoring measures are expected to eliminate the potential for Level A harassment as well as reduce

the amount and intensity for Level B harassment. The construction activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 30 days. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.*, Thorson and Reyff 2006). Individual animals, even if taken multiple times, would likely move away from the visual disturbance of the debris containment system installation and removal. Repeated exposures of individuals to this visual disturbance that could cause Level B harassment are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stock as a whole.

There is no unusual mortality event (UME) currently associated with the harbor seal stock and there are no Biologically Important Areas or known important habitat, aside from Castro Rocks itself, within the project area. While essential fish habitat (EFH) for several fish species does exist in the proposed project area, the proposed activities would not modify existing marine mammal habitat since there is no in-water work. This construction activity should not impact marine mammals' foraging opportunities.

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 is anticipated or authorized;
- Anticipated impacts of Level B harassment include temporary behavior modifications;
 - Short duration and intermittent nature of the debris containment system deployment and removal;
 - The specified project area is very small relative to the overall habitat ranges of the species and do not include habitat areas of special significance (Biologically Important Areas);
 - The lack of anticipated significant or long-term effects to marine mammal habitat;
 - The presumed efficacy of the mitigation measures in reducing the effects of the specified activity; and,
 - Monitoring reports from other construction work in San Francisco Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

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 the affected marine mammal stock.

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.

The amount of take NMFS proposes to authorize in this IHA is below one-third of the estimated stock abundance for harbor seals (see **Estimated Take of Marine Mammals**). The take percentage of the estimated stock of harbor seals, if all estimated take events are assumed to occur to new individuals, would be 29.1 percent. However, this take estimate is assumed to represent repeated takes of the same individuals over time and, therefore, the take estimate represents a significantly smaller actual percentage of the total stock. It is expected that approximately 300 harbor seals are hauled out on Castro Rocks on any given day during the project. The majority of these 300 individuals are expected to be comprised of the same animals during the duration of the project. Therefore, it can be reasonably expected that the percentage of individuals of the overall stock of harbor seals is closer to approximately 1 percent.

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

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 Caltrans for conducting Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, CA from August 1, 2023 to March 30, 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at:

<https://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 for the proposed Phase II of the Richmond-San Rafael Bridge Restoration Project. 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 Activity** section of this notice is planned or (2) the activities as described in the **Description of Proposed Activity** 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 1 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: June 23, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

