



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD736]

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

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

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

SUMMARY: NMFS received a request from the California Department of
Transportation (Caltrans) for the renewal of their currently active incidental harassment
authorization (IHA) to take marine mammals incidental to Phase II of the Richmond-San
Rafael Bridge Restoration Project in Richmond, California. Caltrans' activities will not
be completed prior to the IHA's expiration. Pursuant to the Marine Mammal Protection
Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on
both the proposed IHA and the potential for renewing the initial authorization if certain
requirements were satisfied. The renewal requirements have been satisfied, and NMFS is
now providing an additional 15-day comment period to allow for any additional
comments on the proposed renewal not previously provided during the initial 30-day
comment period.

DATES: Comments and information must be received no later than [INSERT DATE 15
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.

Attachments to comments will be accepted in Microsoft Word, Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *<https://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.

Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *<https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael>*. In case of problems accessing these documents, please contact the analyst 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 promulgated or, if the taking is limited to harassment, an IHA is issued.

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 such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as “take,” “harassment,” and “negligible impact” can be found in the MMPA and the NMFS’s implementing regulations (see 16 U.S.C. 1362 *et seq.*; 50 CFR 216.103).

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal of an 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 Detailed Description of Specified Activities section of the initial IHA issuance notice is planned; or (2) the activities as described in the Description of the Specified Activities

and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. 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);

2. The request for renewal must include the following:

- 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); and
- 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; and

3. 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.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with

relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations 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 determined that the issuance of the initial IHA qualified to be categorically excluded from further National Environmental Policy Act review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On July 31, 2024, NMFS issued an IHA to Caltrans to take marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California (88 FR 51778, August 4, 2023), effective from August 1, 2023 through March, 30 2024. On February 7, 2024, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no

impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

In the initial IHA Caltrans proposed to 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. Caltrans and NMFS concluded that during the deployment and retrieval of the containment system disturbance (*i.e.*, Level B harassment) may occur to harbor seals hauled out at Castro Rocks. Castro Rocks is an important haulout location for harbor seals that is close to the portion of the Richmond-San Rafael Bridge where construction work is occurring.

Under the initial IHA Caltrans took 19 days to deploy the debris containment system and during this time protected species observers (PSOs) did not observe any disturbance of harbor seals hauled out at Castro Rocks. Caltrans will be unable to remove the debris containment system before the expiration of the initial IHA. Therefore, this renewal would allow for the removal of the debris containment system and completion of the restoration project. NMFS authorized 9,000 takes of harbor seals by Level B harassment under the initial IHA, for the installation and removal of the debris containment system. This renewal would authorize a portion of the number of takes authorized in the initial IHA based on the days remaining to complete the work.

All documents related to the initial IHA and the applicants request for renewal are available on our website at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael>

Detailed Description of the Activity

A detailed description of the demolition and construction activities for which take is proposed here may be found in the **Federal Register** notices of the Proposed IHA (88

FR 41920, June 28, 2023) and Final IHA (88 FR 51778, August 4, 2023) for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Under the initial IHA the removal of the debris containment system will not be completed before the IHA expires. This renewal would allow for the removal of the containment system and completion of the restoration work on the Richmond-San Rafael Bridge. The proposed renewal would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, 2023 draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat may be found in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

The initial IHA assumed a daily occurrence rate of 300 harbor seals per day on Castro Rocks. Caltrans expected the installation and removal of the debris containment system to take approximately 30 days. Therefore, the initial IHA authorized a total of 9,000 takes by Level B harassment to complete the installation and removal of the debris containment system. Under the initial IHA Caltrans installed the debris containment system over a 19 day period and no takes by Level B harassment of harbor seals occurred during that time. The removal of the debris containment system will not be completed before the initial IHA expires.

This IHA renewal would authorize take by Level B harassment of harbor seals during the removal of the debris containment system. It is expected to take a total of 10 days to remove the debris containment system once the construction activities are completed. NMFS assumes a similar daily occurrence rate of 300 harbor seals per day on Castro Rocks which over the 10 days of remaining work would equate to a total of 3,000 takes by Level B harassment of harbor seals under this renewal IHA. A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of the Proposed IHA (88 FR 41920, June 28, 2023) and Final IHA (88 FR 51778, August 4, 2023) for the initial authorization.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) remains accurate. The following mitigation measures are proposed for this renewal:

- 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;

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

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

- Staging of barges will not be allowed in the project area;

- Routes for watercraft to reach work locations will be predetermined in consultation with the project biologist to avoid harassment or take of marine mammals hauled out at Castro Rocks; and

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

The following monitoring and reporting measures are proposed for this renewal:

- 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;

- 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; and

- The 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.

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 will 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 ensured, and resulting changes in behavior of the animal(s), if any.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 41920, June 28, 2023) and solicited public comments on both our proposal to issue the initial IHA for the installation and removal of the debris containment system and on the potential for a renewal IHA, should certain requirements be met. All public comments were addressed in the notice announcing the issuance of the initial IHA (88 FR 51778,

August 4, 2023) and none of the comments specifically pertained to the renewal of the 2023 IHA.

Preliminary Determinations

The activities conducted under this potential renewal would be a subset of the activities authorized under the initial IHA. Specifically, this renewal would authorize the removal of the debris containment system. Removal of the debris containment system is expected to take 10 days. This activity was originally authorized under the initial IHA but Caltrans could not complete the removal of the debris containment system before the initial IHA expired. In analyzing the effects of the activities for the initial IHA, NMFS determined that the Caltrans' activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third of the abundance of all stocks). There is no new information that affects NMFS' determinations supporting issuance initial IHA or this renewal. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Caltrans' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of Endangered Species Act (ESA)-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Caltrans for the removal of the debris containment system for Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California from the April 1, 2024, through March 30, 2025, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: February 27, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.