



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD923]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Army Corps of Engineers Debris Dock Replacement Project, Sausalito, 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 U.S. Army Corps of Engineers (ACOE)
for the renewal of their currently active incidental harassment authorization (IHA) to take
marine mammals incidental to the Debris Dock Replacement Project in Sausalito,
California. ACOE activities are identical to those covered in the current authorization.
ACOE's activities will not be completed prior to the renewal authorization. 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, NMFS, and should be submitted via email to *ITP.Owens@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/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Summer Owens, 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’ implementing regulations (see 16 U.S.C. 1362; 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.

(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:

<https://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

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order 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 (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 NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On July 14, 2021, NMFS issued an IHA to the U.S. ACOE to take marine mammals incidental to the Debris Dock Replacement Project in Sausalito, California (86 FR 37124, July 14, 2021) effective September 1, 2021–August 31, 2022. As the planned work was never begun, NMFS reissued this IHA three times on request from the ACOE, effective January 5, 2022–January 4, 2023 (86 FR 73261, December 21, 2021), January 1, 2024–December 31, 2024 (88 FR 16412, March 17, 2023), and most recently, effective

July 15, 2023–July 14, 2024 (88 FR 38035, June 12, 2023). On April 4, 2024, NMFS received an application for the renewal of the most recent reissued IHA, referred to herein as the initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization.

Description of the Specified Activities and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting) authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA. No work has yet occurred under the IHA, but the ACOE has informed us that they plan to begin the planned work but not finish it prior to expiration of the currently issued IHA.

The purpose of the ACOE's construction project is to replace the existing decaying dock and other onshore infrastructure used to move marine debris collected from San Francisco Bay onto land for disposal. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include harbor porpoise (*Phocoena phocoena*), harbor seal (*Phoca vitulina*), gray whale (*Eschrichtius robustus*), bottlenose dolphin (*Tursiops truncatus*), California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*), and northern elephant seal (*Mirounga angustirostris*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports (SAR), information on relevant Unusual Mortality Events (UME), and recent

scientific literature, and determined that no new information affects our original analysis of impacts or take estimates under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the 2021 IHA for the ACOE's construction work (86 FR 37124, July 14, 2021), the ACOE's application, the **Federal Register** notice of the proposed IHA (86 FR 28768, May 28, 2021), all associated references and documents, and Federal Register notices of issuance for the reissued IHAs.

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 notices of the proposed (86 FR 28768, May 28, 2021) and final IHAs for the 2021 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. The proposed renewal would be effective for a period from July 15, 2024, to July 14, 2025.

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 notices of the proposed and final IHAs for the 2021 authorization. NMFS has reviewed recent SARs, including the draft 2023 SARs, information on relevant UMEs, 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. Two of the authorized stocks have increased slightly in abundance according to the draft 2023 SARs. The San Francisco/Russian River stock of harbor porpoise has increased from 7,524 to 7,777 and the California breeding stock of northern elephant seal has increased

from 179,000 to 187,386. However, these new population abundance estimates do not change estimated take numbers, or influence the findings made in support of 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 for the activities for which an authorization of incidental take is proposed here may be found in the notices of the proposed and final IHAs for the 2021 authorization. NMFS has reviewed recent draft SARs, information on relevant UMEs, 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

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Final IHAs for the 2021 authorization. Specifically, the source levels, days of operation, and marine mammal density and occurrence data applicable to this authorization remain unchanged from the previously issued IHAs. Similarly, the stocks taken, methods and types of takes, and numbers of takes remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in table 1.

Table 1 -- Summary of Marine Mammal Takes by Species

Common Name	Scientific Name	Stock	Level A Harassment	Level B Harassment	Percent of Stock
Harbor Seal	<i>Phoca vitulina</i>	California	2	527	1.7
Harbor Porpoise	<i>Phocoena phocoena</i>	San Francisco-Russian River	2	21	0.3
California Sea Lion	<i>Zalophus californianus</i>	U.S.	2	20	<0.1
Gray Whale	<i>Eschrichtius robustus</i>	Eastern North	0	2	<0.1

		Pacific			
Bottlenose Dolphin	<i>Tursiops truncatus</i>	California Coastal	0	9	2
Northern Elephant Seal	<i>Mirounga angustirostris</i>	California Breeding	0	5	<0.1
Northern Fur Seal	<i>Callorhinus ursinus</i>	California and Eastern North Pacific	0	3	<0.1

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in the authorization are identical to those included in the **Federal Register** notice announcing the issuance of the 2021 IHA and subsequently included in the reissued IHAs, and the discussion of the least practicable adverse impact included in the application and the notice of the proposed and final IHA remains accurate.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (86 FR 28768, May 28, 2021) and solicited public comments on both our proposal to issue the 2021 IHA for pile driving and removal activities 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 (86 FR 37124, July 14, 2021) and none of the comments specifically pertained to the renewal of the IHA.

Preliminary Determinations

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 affect 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) U.S. ACOE 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 (ESA)

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure 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 Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the U.S. ACOE for conducting Debris Dock Replacement Project using pile driving in Sausalito, California, between July 15, 2024, and July 14, 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-army-corps-engineers-debris-dock-replacement-project-sausalito>. 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: May 6, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2024-10418 Filed: 5/10/2024 8:45 am; Publication Date: 5/13/2024]