



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 250623-0106]

RIN 0648-BN36

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

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

ACTION: Final rule; notification of issuance of Letter of Authorization.

SUMMARY: NMFS, upon request from the University of California Santa Cruz (UCSC), hereby issues regulations to govern the unintentional taking of marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts over the course of 5 years (2025-2030). These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: This rule is effective from June 26, 2025, through June 26, 2030.

ADDRESSES: 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/action/incidental-take-authorization-university->

california-santa-cruzs-rocky-intertidal-monitoring. In case of problems accessing these documents, please call the contact listed below.

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

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) and authorizes, for a 5-year period (2025-2030), take of marine mammals incidental to the UCSC/MARINE's rocky intertidal research activities in Oregon and California.

NMFS received an incidental take authorization (ITA) application from the UCSC/MARINE requesting 5-year regulations and an LOA to take four species of marine mammals by Level B harassment (Application). Take of harbor seal (*Phoca vitulina richardii*), Steller sea lion (*Eumetopias jubatus*), northern elephant seal (*Mirounga angustirostris*), and California sea lion (*Zalophus californianus*) would occur by Level B harassment only, incidental to visual and auditory disturbance of pinnipeds occurring near research sites. No mortality or serious injury is anticipated or authorized. Please see the **Estimated Take of Marine Mammals** section below for definitions of harassment.

A previous incidental take authorization was issued in association with this ongoing, long-term project. That authorization was issued to the UCSC Partnership for Interdisciplinary Studies of Coastal Oceans (referred to as UCSC/PISCO). Additional information about that action can be found at:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-university-california-santa-cruz-rocky-intertidal-monitoring-0>.

Legal Authority for the Proposed Action

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, regulations are promulgated, and public notice and an opportunity for public comment are provided.

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. NMFS will pay particular attention to (1) rookeries, mating grounds, and areas of similar significance, (2) the availability of the species or stocks for taking for certain subsistence uses (referred to as “mitigation”), and (3) the 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 below.

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for issuing 5-year regulations and an associated LOA. This rule establishes required mitigation, monitoring, and reporting requirements for the UCSC/MARINE’s activities.

Summary of Major Provisions within the Proposed Rule

The following is a summary of the major provisions of this rule

regarding UCSC/MARINE's research activities. These provisions include measures requiring:

- Mitigation to minimize impact to pinnipeds and avoid disruption to dependent pups including several measures to approach haulouts cautiously to minimize disturbance, especially when pups are present; and
- Monitoring of the research areas to detect the presence of marine mammals before initiating surveys.

Summary of Request

On September 6, 2024, NMFS received a request from the UCSC/MARINE for an authorization to take marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. Following NMFS' review of the application, UCSC/MARINE submitted a revised version that was deemed adequate and complete on November 26, 2024. UCSC/MARINE's request is for incidental take of four pinniped species by Level B harassment only; harbor seal, Steller sea lion, northern elephant seal, and California sea lion. Neither UCSC/MARINE nor NMFS expect serious injury or mortality to result from this activity.

NMFS previously issued seven IHAs (77 FR 72327, December 5, 2012; 78 FR 79403, December 30, 2013; 79 FR 73048, December 9, 2014; 81 FR 7319, February 11, 2016; 82 FR 12568, March 6, 2017; 83 FR 11696, March 16, 2018; 84 FR 17784, April 26, 2019) to the UCSC Partnership for Interdisciplinary Studies of Coastal Oceans (UCSC/PISCO) for this work before issuing a final rule and associated LOA in 2020 (85 FR 18459, April 2, 2020). UCSC/PISCO complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and LOA. UCSC/PISCO monitoring results from 2013 to 2024 may be found in the Application, which is available online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-university-california-santa-cruzs-rocky-intertidal-monitoring>.

Description of Activity

UCSC/MARINE has been authorized to conduct rocky intertidal monitoring work for over 20 years. This work focuses on understanding the nearshore ecosystems of the U.S. West Coast through a number of interdisciplinary collaborations. The program integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. Research is conducted throughout the year along the California and Oregon coasts and is expected to continue indefinitely. Researchers accessing and conducting research activities on the sites occasionally result in the incidental take of four pinniped species by incidental, Level B harassment. UCSC/MARINE expects, and NMFS concurs, that the disturbance to pinnipeds from the research activities will be limited to Level B harassment. Take by Level A harassment, serious injury, or mortality is not anticipated and will not be authorized through this action.

Some sampling may occur in all months of the calendar year. Over the course of this 5-year effective period for the rule, UCSC/MARINE expects approximately 300 days of survey effort. Exact locations of sampling sites can be found in table 1 of the

Application, along with maps at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-university-california-santa-cruzs-rocky-intertidal-monitoring>.

A detailed description of the monitoring project, along with mitigation, monitoring, and reporting measures, are described in detail in the **Federal Register** notice for the proposed ITA (90 FR 13322, March 21, 2025). Since that time, the only change that has been added is a mitigation measure that was omitted in the proposed rule (see **Summary of Request** section above). Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an ITA to the UCSC/MARINe was published in the **Federal Register** notice for the proposed ITA (90 FR 13322, March 21, 2025). That notice described, in detail, UCSC/MARINe's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed ITA, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS received comments from two individuals. Both comments supported the project activities, and emphasized the continued timely posting of the annual reports for public transparency, and the continued refinement of mitigation measures to reduce disturbance. The comments and recommendations are available online at: <https://www.regulations.gov/document/NOAA-NMFS-2024-0144-0003/comment>. Please see the comment submissions for full details regarding the recommendations and supporting rationale. As comments suggested

continued mitigation measures already employed by the applicant, no changes resulting from public comments were made from the proposed to the final rule.

Changes from the Proposed Rule

There is one change from the proposed to the final rule. NMFS inadvertently omitted from the proposed rule a mitigation measure stating that any research occurring on the Channel Islands, Farallon Islands, or Año Nuevo Island would be coordinated with researchers who regularly work in these areas in order to both gain access and reduce the amount of disturbance to marine mammals. UCSC proposed this measure as part of its petition for regulations, which was made available for public review during the Notice of Receipt and proposed rule public comment periods. This mitigation measure has been added to this final rule in the preamble and the regulatory text.

Description of Marine Mammals in the Area of Specified Activities

Table 1 lists all species or stocks for which take is expected and 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. 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 (table 1). NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://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>).

A detailed description of the species likely to be affected by the UCSC/MARINe project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed ITA (90 FR 13322, March 21, 2025); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Table 1 – Marine Mammals Potentially Present Near the UCSC/MARINe Research Sites

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Carnivora – Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	<i>Zalophus californianus</i>	U.S.	-; N	257,606 (n/a; 233,515; 2014)	14,011	>321
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	-; N	36,308 (n/a; 36,308; 2022)	2,178 (US only)	92.3
Family Phocidae (earless seals)						
Harbor seal	<i>Phoca vitulina</i>	California,	-; N	30,968 (n/a; 27,348; 2012)	1,641	43
		Oregon/Washington	-; N	24,732 (unknown; 16,165 mean; 1999) ⁴	unknown	10.6
Northern elephant seal	<i>Mirounga angustirostris</i>	California	-; N	187,386 (n/a; 85,369; 2013)	5,122	13.7

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 in the near 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.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3 - These Mortality/Serious Injury (M/SI) 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. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

4 - The most recent abundance estimate for this stock (24,732 animals) is from 1999 surveys (Final 2023 SAR), with a mean calculated at 16,165 animals.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from UCSC/MARINE monitoring activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed rulemaking (90 FR 13322, March 21, 2025) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from UCSC/MARINE monitoring activities on marine mammals and their habitat. That information and analysis is referenced in this final ITA determination and is not repeated here; please refer to the notice of proposed rulemaking (90 FR 13322, March 21, 2025).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes of the four species of pinnipeds by Level B harassment that may be authorized under this rule, which informs both NMFS' consideration of "small numbers" and the negligible impact determination.

Harassment, defined previously in the **Purpose and Need for Regulatory Action** section, is the only type of take expected to result from these activities.

Authorized takes will be by Level B harassment only, in the form of potential disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers and the operation of their equipment. Based on the nature of the activity,

Level A harassment is neither anticipated nor authorized. As described previously, no mortality is anticipated or authorized for this activity. Researchers with extensive knowledge and experience at each survey site estimated the actual number of marine mammal takes likely to occur, using annual recorded observations. Take estimates are based on historical marine mammal observations from 2013-2024 at each site from previous UCSC/PISCO (MARINe) survey activities. Take estimates for each species were based on the following equation:

$$\text{Take estimate / survey site} = \# \text{ of expected animals / site} * \# \text{ of planned survey events / survey site.}$$

The species' estimated take totals for each survey site were summed to arrive at a total estimated take for the entire duration of the rule across all four impacted species of pinnipeds. We fully describe how the take numbers are estimated in detail in the proposed ITA (90 FR 13322, March 21, 2025), and summarize below in table 2.

Table 2 –Authorized Incidental Take by Level B Harassment (in total and per year) and Percentage of Populations Affected

Species	Abundance (<i>Caretta et al.</i> 2023, <i>Young et al</i> 2023)	Authorized Incidental Take (Level B Harassment only)		
		Take over 5 years	Take per year	% of Population
Harbor seal – CA stock (<i>Phoca vitulina</i>)	30,968	1462	292	0.94
Harbor seal – WA/OR stock (<i>Phoca vitulina</i>)	24,732	150	30	0.12
California sea lion (<i>Zalophus californianus</i>)	257,606	3150	630	0.24
Northern elephant seal (<i>Mirounga angustirostris</i>)	187,386	760	152	0.08
Steller sea lion (<i>Eumetopias jubatus</i>)	36,308	75	15	0.04

Monitoring reports from the previously issued LOA (2020-2025), including Level B harassment take numbers, are available on our website:

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-university-california-santa-cruz-rocky-intertidal-monitoring-0>.

Mitigation

Under section 101(a)(5)(A) 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 (the latter is 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 (*e.g.*, likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (*i.e.*, probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability of accomplishing the mitigating result if implemented as planned); and
- (2) The practicability of the measures for applicant implementation, which may consider cost and impact on operations.

UCSC/MARINe will implement several mitigation measures to reduce potential take by Level B harassment. Measures are listed below.

- Researchers will observe a site from a distance for at least 5 minutes, using binoculars, if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (i.e., site surveys will not be conducted if other pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled out individuals and to reduce flushing/stampeding of individuals).
- Researchers will avoid pinnipeds along access ways to sites by locating and taking a different access route. Researchers will keep a safe distance from, and not approach, any marine mammal while conducting research unless it is absolutely necessary to flush (*i.e.*, disturb from its position) a marine mammal in order to continue conducting research (*i.e.* if a site cannot be accessed or sampled due to the presence of pinnipeds).
- Researchers will avoid making loud noises (*e.g.*, using hushed voices) and keep bodies low to the ground (*i.e.*, crouched) in the visual presence of pinnipeds.
- Researchers will monitor the offshore area for predators (*e.g.*, killer whales and great white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters. Note that UCSC/MARINe has never observed an offshore predator while researchers were present at any of the survey sites.
- Intentional approach will not occur if dependent pups are present to avoid mother/pup separation and trampling of pups. Staff shall reschedule work at sites where pups are present unless other means of accomplishing the work can be done without causing disturbance to mothers and dependent pups.
- When operating UAVs around pinnipeds, altitude will not drop below 10 meters.

- Researchers will promptly vacate sites at the conclusion of sampling.
- Research occurring on the Channel Islands, Farallon Islands, or Año

Nuevo Island will be coordinated with researchers who regularly work in these areas.

The primary methods of mitigating the risk of disturbance to pinnipeds is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. Each visit to a given study site will last for approximately 4-6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. In addition, workers will be arriving before low tide; worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

In order to both gain access and further reduce the amount of disturbance to marine mammals, any research occurring on the Channel Islands, Farallon Islands, or Año Nuevo Island would be coordinated with researchers who regularly work in these areas. This mitigation measure, which was proposed by UCSC, was inadvertently omitted from the proposed rule, and has been added to this final rule in the preamble and the regulatory text.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA 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 to both 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.

UCSC/MARINE will contribute to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate

personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Monitoring requirements in relation to UCSC/MARINE’s rocky intertidal monitoring will include observations made by the applicant. Information recorded will include species counts (with numbers of pups/juveniles) of animals present before approaching, numbers of observed disturbances (based on the scale below), and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. For consistency, any reactions by pinnipeds to researchers will be recorded according to a 3-point scale shown in table 3. Note that only observations of disturbance levels 2 and 3 should be recorded as takings.

Table 3 – Levels of Pinniped Behavioral Disturbance

Level	Type of response	Definition
0	Observation	Observation by researchers from a distance; no disturbance to pinniped
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 away from 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.

In addition, observations regarding the number and species of any marine mammals observed (either in the water or hauled out at, or adjacent to, a research site) are recorded as part of field observations during research activities. Information regarding physical and biological conditions pertaining to a site, as well as the date and time that

research was conducted, will also be recorded. This information will be incorporated into a monitoring report for NMFS and raw data will be provided.

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

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

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

In the event that UCSC/MARINE discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), UCSC/MARINE shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information identified in the paragraph above. Activities may continue while NMFS

reviews the circumstances of the incident. NMFS will work with UCSC/MARINe to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the regulations and LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UCSC/MARINe shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery.

UCSC/MARINe shall provide photographs, video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

A draft annual report shall be submitted to NMFS Office of Protected Resources within 90 days after the conclusion of each annual field season (50 CFR 217.105(d)(1)). The report will include a summary of the information gathered pursuant to the monitoring requirements set forth above and in the LOA. A final annual report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report (50 CFR 217.105(d)(2)). If no comments are received from NMFS, the draft annual report will be considered the final report.

Monitoring Results from Previously Authorized Activities

UCSC/MARINe complied with the mitigation and monitoring that were required under the prior IHAs issued from 2013 to 2019, and the LOA issued in 2020. In compliance with those IHAs, they submitted reports detailing the activities and marine mammal monitoring they conducted, the most recent report submitted in 2024 and

accessible at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-university-california-santa-cruz-rocky-intertidal-monitoring-0>. The IHAs required UCSC/MARINE to conduct counts of pinnipeds present at study sites prior to approaching the sites and to record species counts and any observed reactions to the presence of the researchers. These monitoring results were summarized above in the **Estimated Take of Marine Mammals** section, with a detailed discussion in the proposed ITA (90 FR 13322, March 21, 2025).

Based on the results from the monitoring reports, we conclude that the mitigation measures set forth in the previous authorizations effected the least practicable impact on the species or stocks. There were no stampede events during these years and most disturbances were level 1 and 2 on the disturbance scale (see table 3), meaning the animal did not fully flush but observed or moved slightly in response to researchers. Those that did fully flush to the water did so slowly. Most of these animals tended to observe researchers from the water and then re-haul out farther up-coast or down-coast of the site within approximately 30 minutes of the disturbance.

Adaptive Management

The regulations governing the take of marine mammals incidental to the UCSC/MARINE's research activities would contain an adaptive management component. The reporting requirements associated with this rule are designed to provide NMFS with annual monitoring data to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issues pursuant to these regulations.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Research activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment from researcher's movements and equipment handling. Potential takes could occur if individuals of these species are present nearby when these activities are underway. No injuries or mortalities are anticipated to occur as a result of UCSC/MARINE's rocky intertidal monitoring surveys and none are authorized.

Typically, even those reactions constituting Level B harassment would result, at most, in a temporary, short-term behavioral disturbance. In any given study season, researchers will visit select sites one to two times per year for four to six hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods. These short periods of disturbance lasting less than a day are separated by months or years. Community structure sites are visited at most twice per year and the visits occur in different seasons. Biodiversity surveys take place at a given location once every three to five years.

Of the marine mammal species anticipated to occur in the activity areas, none are listed under the ESA. Taking into account the planned mitigation measures, effects to marine mammals are generally expected to be restricted to short-term changes in behavior or temporary abandonment of haulout sites, pinnipeds are not expected to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual monitoring counts. No adverse effects to prey species are anticipated and habitat impacts are limited and highly

localized, consisting of the placement of permanent bolts and temporary research equipment in the intertidal zone. Based on this analysis of the likely effects of the specified activity on marine mammals and their habitat, and considering the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal incidental take from UCSC/MARINE's rocky intertidal monitoring program will not adversely affect annual rates of recruitment or survival. Therefore, such incidental take will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our 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;
- Only a small number of pups are expected to be disturbed;
- Effects of the survey activities would be limited to short-term, localized

behavioral changes;

- Nominal impacts to pinniped habitat are anticipated; and
- Mitigation measures are anticipated to be effective in minimizing the

number and severity of takes by Level B harassment, which are expected to be of short duration.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) 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 maximum number of individuals taken in any year 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 (see 86 FR 5322, January 19, 2021). 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 authorizes is 0.04 to 0.94 percent of any stock's best population estimate (see table 2). These are likely conservative estimates because they assume all encounters result in take, which has not historically been the case.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS 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.

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 action (*i.e.*, promulgation of regulations and issuance of a 5-year LOA) and alternatives 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 ITAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 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 determined that the issuance of the ITA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (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 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.

Classification

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866. This rule is not an Executive Order regulatory action because this action is not significant under Executive Order 12866.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. UCSC/MARINE is the sole entity that would be subject to the requirements in these regulations, and UCSC/MARINE is not a small governmental jurisdiction, organization, or business as defined by the RFA. No comments were received regarding this certification or on the economic impacts of the rule more generally. As a result, a regulatory flexibility analysis is not required and none has been prepared.

This rule does contain collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. These requirements have been approved by OMB under control number 0648-0151, Applications and Reporting Requirements for Incidental Taking of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act, and include the applications for regulations, subsequent LOA, and reports.

Waiver of Delay in Effective Date

NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than UCSC is affected by the provisions of these regulations.

The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are in place as soon as possible to ensure the UCSC's

compliance with the MMPA. Any delay in finalizing the rule would result in either: (1) A suspension of planned research, which would disrupt the provision of vital data necessary for effective management of intertidal habitat; or (2) the UCSC's procedural non-compliance with the MMPA (should the UCSC conduct research without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, UCSC is ready to implement the regulations immediately and requested the waiver. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore, by granting an exception to UCSC, the rule will relieve restrictions under the MMPA, which provides a separate basis for waiving the 30-day effective date for the rule.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 23, 2025.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

**PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE
MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES**

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Revise and republish subpart K to part 217 to read as follows:

Subpart K – Taking Marine Mammals Incidental to Rocky Intertidal Monitoring

Surveys Along the Oregon and California Coasts

Sec.

217.100 Specified activity and specified geographical region.

217.101 Effective dates.

217.102 Permissible methods of taking.

217.103 Prohibitions.

217.104 Mitigation requirements.

217.105 Requirements for monitoring and reporting.

217.106 Letters of Authorization.

217.107 Renewals and modifications of Letters of Authorization.

217.108 – 217.109 [Reserved]

Subpart K – Taking Marine Mammals Incidental to Rocky Intertidal Monitoring

Surveys Along the Oregon and California Coasts

§ 217.100 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the University of California Santa Cruz’s Multi-Agency Rocky Intertidal Network (UCSC/MARINe) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occur in the areas outlined in paragraph (b) of this section and that occur incidental to rocky intertidal monitoring research surveys.

(b) The taking of marine mammals by UCSC/MARINe may be authorized in a Letter of Authorization (LOA) only if it occurs on the coasts of Oregon or California.

§ 217.101 Effective dates.

Regulations in this subpart are effective from June 26, 2025, through June 26,

2030.

§ 217.102 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.106, the Holder of the LOA (hereinafter “UCSC/MARINE”) may incidentally, but not intentionally, take marine mammals within the area described in § 217.100 (b) by Level B harassment associated with rocky intertidal monitoring activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.103 Prohibitions.

Notwithstanding takings contemplated in § 217.100 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.106, no person in connection with the activities described in § 217.100 may:

- (a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 217.106;
- (b) Take any marine mammal not specified in such LOA;
- (c) Take any marine mammal specified in such LOA in any manner other than as specified in § 217.102;
- (d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- (e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.104 Mitigation requirements.

When conducting the activities identified in § 217.100(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.106 must be

implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) Researchers must observe a site from a distance for at least five minutes, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required. Site surveys will not be conducted if other species of pinnipeds are present. Researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled out individuals and to reduce flushing (*i.e.*, disturbing from its position).

(2) Researchers shall avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers shall keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to approach a marine mammal in order to continue conducting research (*i.e.*, if a site cannot be accessed or sampled due to the presence of pinnipeds).

(3) Researchers shall avoid making loud noises (*e.g.*, using hushed voices) and keep bodies low to the ground in the visual presence of pinnipeds.

(4) Researchers shall monitor the offshore area for predators (*e.g.*, killer whales and great white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters.

(5) Researchers shall promptly vacate sites at the conclusion of sampling.

(6) Researchers shall not operate unmanned aerial vehicles (UAVs) at an altitude below 10 meters while in the presence of pinnipeds.

(7) Research occurring on the Channel Islands, Farallon Islands, or Año Nuevo Island will be coordinated with researchers who regularly work in these areas.

(b) *Pup protection measures.* (1) Intentional approach will not occur if dependent pups are present to avoid mother/pup separation and trampling of pups. Staff shall reschedule work at sites where pups are present, unless other means of accomplishing the work can be done without causing disturbance to mothers and dependent pups.

(2) [Reserved]

§ 217.105 Requirements for monitoring and reporting.

(a) *Visual monitoring program.* (1) Standard information recorded will include species counts (with numbers of pups/juveniles when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event.

(2) UCSC/MARINE must note observations of:

(i) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel;

(ii) Tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and

(iii) Rare or unusual species of marine mammals for agency follow-up.

(3) For consistency, any reactions by pinnipeds to researchers must be recorded according to a three-point pinniped disturbance scale included in any LOA issued under § 216.106 of this chapter and § 217.106.

(4) UCSC/MARINE must note information regarding the date and time that research is conducted, as well as the physical and biological conditions pertaining to a site.

(b) *Prohibited take.* (1) If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by these regulations or LOA, such as an injury (Level A harassment), serious injury, or mortality, UCSC/MARINE shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s) (if equipment is available).

(2) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with UCSC/MARINE to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act (MMPA) compliance. UCSC/MARINE must not resume the activities until notified by NMFS via letter, email, or telephone.

(c) *Notification of dead or injured marine mammals.* (1) In the event that UCSC/MARINE discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), UCSC/MARINE shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (b)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with UCSC/MARINE to determine whether additional mitigation measures or modifications to the activities are appropriate; and

(2) In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the regulations and LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UCSC/MARINE shall

report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery.

UCSC/MARINe shall provide photographs, video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

(d) *Annual report.* (1) A draft annual report shall be submitted to NMFS Office of Protected Resources within 90 days after the conclusion of each annual field season. The final annual report after year five may be included as part of the final report (see paragraph (e) of this section). The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in this section and in the LOA; and

(2) A final annual report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

§ 217.106 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, UCSC/MARINe must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, UCSC/MARINe may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, UCSC/MARINe must apply for and obtain a modification of the LOA as described in § 217.107.

(e) The LOA shall set forth:

(1) Permissible methods and numbers of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.107 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.106 for the activity identified in § 217.100(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS' Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years),

NMFS' Office of Protected Resources may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.106 for the activity identified in § 217.100(a) may be modified by NMFS' Office of Protected Resources under the following circumstances:

(1) *Adaptive Management*. NMFS' Office of Protected Resources may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with UCSC/MARINE regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in this subpart.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from UCSC/MARINE's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS' Office of Protected Resources will publish a notice of proposed LOA in the **Federal Register** and solicit public comment; and

(2) *Emergencies*. If NMFS' Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.106, an LOA may be modified without prior notice or opportunity for public comment. Notice will publish in the **Federal Register** within 30 days of the action.

§§ 217.108 – 217.109 [Reserved]

[FR Doc. 2025-11748 Filed: 6/25/2025 8:45 am; Publication Date: 6/26/2025]