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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF118

Takes of Marine Mammals Incidental to Specified Activities; Gull Monitoring and Research in Glacier Bay National Park, Alaska, 2017

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that the NMFS has issued an incidental harassment authorization (IHA) to the National Park Service (NPS) to incidentally harass, by Level B harassment only, marine mammals during gull monitoring and research activities in Glacier Bay National Park (Glacier Bay NP) from May through September, 2017.

DATES: This Authorization is effective from May 1, 2017 through September 30, 2017.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, provided that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals shall be allowed if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking, as well as the other means of effecting the least practicable adverse impact on the species or stock and its habitat (*i.e.*, mitigation) must be prescribed. Last, requirements pertaining to the monitoring and reporting of such taking must be set forth.

Where there is the potential for serious injury or death, the allowance of incidental taking requires promulgation of regulations under section 101(a)(5)(A). Subsequently, a Letter (or Letters) of Authorization may be issued as governed by the prescriptions established in such regulations, provided that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize incidental taking by harassment only (*i.e.*, no serious injury or mortality), for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The promulgation of regulations or issuance of IHAs (with their associated prescribed mitigation, monitoring, and reporting) requires notice

and opportunity for public comment.

NMFS has defined “negligible impact” in 50 CFR 216.103 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.”

NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity:

- 1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and
- 2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On November 22, 2016, NMFS received an application from Glacier Bay NP requesting taking by harassment of marine mammals, incidental to conducting monitoring

and research studies on glaucous-winged gulls (*Larus glaucescens*) within Glacier Bay NP, Alaska. The application was considered adequate and complete on February 10, 2017. NMFS previously issued three IHAs to Glacier Bay NP for the same activities from 2014 to 2016 (79 FR 56065, September 18, 2014; 80 FR 28229, May 18, 2015; 81 FR 34994, May 16, 2016).

For the 2017 research season, Glacier Bay NP plans to conduct ground-based and vessel-based surveys to collect data on the number and distribution of nesting gulls within six study sites in Glacier Bay, Alaska. Marine mammals have only been observed at four of the six study sites. The planned activities would occur over the course of five months, from May through September 2017.

The following aspects of the planned gull research activities have the potential to take marine mammals: noise generated by motorboat approaches and departures; noise generated by researchers while conducting ground surveys; and human presence (visual disturbance) during the monitoring and research activities. Harbor seals hauled out at the study sites may flush into the water or exhibit temporary modification in behavior (Level B harassment). Thus, Glacier Bay NP has requested an authorization to take harbor seals by Level B harassment only. Although Steller sea lions (*Eumetopias jubatus*) may be present in the action area, Glacier Bay NP will avoid any site used by Steller sea lions.

Description of the Specified Activity

Glacier Bay NP plans to identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites within the following study areas: Boulder, Lone, and Flapjack Islands, and Geikie Rock from May 1 through September 30, 2017. Glacier Bay NP plans to conduct a maximum of three ground-based

surveys per each study site and a maximum of two vessel-based surveys per each study site. Duration of surveys would be 30 minutes (min) to two hours (hr) each. Each of these study sites contains harbor seal haulout sites and Glacier Bay NP plans to visit each study site up to five times during the research season. Glacier Bay NP also plans to conduct studies at South Marble Island and Tlingit Point Islet; however, there are no reported pinniped haulouts at those locations.

Glacier Bay NP must conduct the gull monitoring studies to meet the requirements of a 2010 Record of Decision for a Legislative Environmental Impact Statement (LEIS) (NPS, 2010) which states that Glacier Bay NP must initiate a monitoring program for the gulls to inform future native egg harvests by the Hoonah Tlingit in Glacier Bay, AK. Glacier Bay NP also actively monitors harbor seals at breeding and molting sites to assess population trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.*, 2010). Glacier Bay NP coordinates pinniped monitoring programs with NMFS' Alaska Fisheries Science Center and the Alaska Department of Fish and Game and plans to continue these collaborations and sharing of monitoring data and observations in the future.

A detailed description of the planned Glacier Bay NP project is provided in the **Federal Register** notice for the proposed IHA (82 FR 12931; March 8, 2017). Since that time, no changes have been made to the planned activities. 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's proposal to issue an IHA to the NPS at Glacier Bay NP was published in the **Federal Register** on March 8, 2017 (82 FR 12931). That notice

described, in detail, Glacier Bay NP's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received only one pertinent comment letter, from the Marine Mammal Commission (Commission).

Comment 1: NMFS received a comment from the Commission with the recommendation that NMFS follow its policy of a 24-hour reset for enumerating the number of harbor seals that could be taken during the planned activities by applying standard rounding rules before summing the numbers of estimated takes across survey sites and survey days.

Response: Calculating predicted take is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. NMFS is currently engaged in developing a protocol to guide more consistent take calculation given certain circumstances. We believe, however, that the methodology for this action remains appropriate.

Description of Marine Mammals in the Area of the Specified Activity

A detailed description of the of the species likely to be affected by the Glacier Bay NP 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 IHA (82 FR 12931; March 8, 2017); 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 refer to additional

species information available in the NMFS SARs for Alaska at

<http://www.nmfs.noaa.gov/pr/sars/region.htm>.

Marine mammals under NMFS' jurisdiction that occur in the vicinity of the study sites in Glacier Bay NP include the harbor seal and Steller sea lion (Table 1).

Table 1. General information on marine mammals that could potentially haul out in the study areas in Glacier Bay, Alaska, May through September 2017.

| Species | Scientific Name | Stock Name | Regulatory Status ^{1,2} | Occurrence and Range | Season |
|------------------|-----------------------------|--------------------------|----------------------------------|----------------------|------------|
| Harbor seal | <i>(Phoca vitulina)</i> | Glacier Bay / Icy Strait | MMPA - NC ESA - NL | common coastal | year-round |
| Steller sea lion | <i>(Eumetopias jubatus)</i> | Eastern U.S. | MMPA - D, S ESA - DL | uncommon coastal | year-round |
| Steller sea lion | <i>(Eumetopias jubatus)</i> | Western U.S. | MMPA - D, S ESA - E | uncommon coastal | unknown |

¹ MMPA: D = Depleted, S = Strategic, NC = Not Classified.

² ESA: E = Endangered, T = Threatened, DL = Delisted, NL = Not listed.

³ 2015 NMFS Stock Assessment Report (Muto *et al.*, 2016).

Both are protected under the MMPA and the Steller sea lion is listed as endangered (Western Distinct Population Segment) under the Endangered Species Act (ESA). It was determined that take will not occur for Steller sea lions based on available survey data and for the fact that NPS will not survey a site if Steller sea lions are present. Therefore, Steller sea lions are not discussed further in this authorization.

Harbor seals of Glacier Bay are considered part of the Glacier Bay/Icy Strait stock (Table 2) – ranging from Cape Fairweather southeast to Column Point, extending inland to Glacier Bay, Icy Strait, and from Hanus Reef south to Tenakee Inlet (Muto *et al.*, 2016).

Table 2. Harbor Seal Status Information.

| Species | Stock | ES)/MMPA status; Strategic (Y/N) ¹ | Stock abundance (N _{min} , most recent abundance survey) ² | PBR ³ | Annual M/SI ⁴ | Relative occurrence/season of occurrence |
|-------------|---------------------------------|-----------------------------------------------|--------------------------------------------------------------------------------|------------------|--------------------------|----------------------------------------------------------------|
| Harbor seal | Glacier Bay/Icy Strait (Alaska) | -; N | 7,210 (5,647; 2011) | 169 | 104 | Harbor seals are year-round inhabitants of Glacier Bay, Alaska |

¹Endangered 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 (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² N_{\min} is the minimum estimate of stock abundance. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

³Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

⁴These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the final 2015 Harbor Seal, Alaska SAR. (http://www.nmfs.noaa.gov/pr/sars/pdf/stocks/alaska/2015/ak2015_sehr.pdf).

Potential Effects of the Specified Activities on Marine Mammals and Their Habitat

The effects of noise and visual disturbance from the Glacier Bay NP activities for the gull monitoring and research project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, nor impacts to food sources. The **Federal Register** notice for the proposed IHA (82 FR 12931; March 8, 2017) included a discussion of the effects of disturbance on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (82 FR 12931; March 8, 2017) for that information

Based on the available data, previous monitoring reports from Glacier Bay NP, and studies described in the proposed IHA, we anticipate that any pinnipeds found in the vicinity of the project could have short-term behavioral reactions (*i.e.*, may result in marine mammals avoiding certain areas) due to noise and visual disturbance generated by: (1) motorboat approaches and departures and (2) human presence during gull research activities. We would expect the pinnipeds to return to a haul-out site within minutes to hours of the stimulus based on previous research (Allen *et al.*, 1985). Pinnipeds may be

temporarily displaced from their haul-out sites, but we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of the research as activities are short in duration (30 min to up to two hours), and previous surveys have demonstrated that seals have returned to their haulout sites and have not permanently abandoned the sites.

NMFS does not anticipate that the planned activities would result in the injury, serious injury, or mortality of pinnipeds. NMFS does not anticipate that strikes or collisions would result from the movement of the motorboat. The planned activities will not result in any permanent impact on habitats used by marine mammals, including prey species and foraging habitat. The potential effects to marine mammals described in this section of the document do not take into consideration the monitoring and mitigation measures described later in this document (see the “Mitigation” and “Monitoring and Reporting” sections).

Estimated Take

This section includes an estimate of the number of incidental “takes” for the authorization pursuant to this IHA, which informed both NMFS’ consideration of whether the number of takes is “small” and the negligible impact determination.

Take in the form of harassment is expected to result from these activities. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing,

nursing, breeding, feeding, or sheltering (Level B harassment).

As described previously in the Effects section, Level B Harassment is expected to occur and is authorized in the numbers identified below. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures, Level A Harassment is neither anticipated nor authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or authorized from this activity.

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the presence of Glacier Bay NP personnel could disturb animals hauled out and that the animals may alter their behavior or attempt to move away from the researchers.

Harbor seals may be disturbed when vessels approach or researchers go ashore for the purpose of monitoring gull colonies. Harbor seals tend to haul out in small numbers at study sites (2015-2016): Boulder Island – average 4.85 seals, Flapjack Island – average 11.22 seals, Geikie Rock – average 10.25 seals, and Lone Island average of 17.22 seals (see raw data from Tables 1 of the 2016 and 2015 Monitoring Report). Based on previous pinniped observations during gull monitoring (2015 and 2016) conducted by Glacier Bay NP, NMFS estimates that the research activities could potentially affect by Level B behavioral harassment 218 incidents of harassment to harbor seals over the course of the authorization. This number was calculated by multiplying the average number of seals observed at each site (2015-2016) by five visits per site for a total of 218 incidents of harassment (Table 3). The highest number of annual visits to each gull study site will be five, therefore it is expected that individual harbor seals at a given site will be disturbed no

more than five times per year.

Table 3. Level B takes by harassment by during NPS gull surveys.

| Survey sites | Average number of seals observed* | Number of site visits | Incidents of harassments/Level B take |
|---------------------|------------------------------------------|------------------------------|----------------------------------------------|
| Boulder Island | 4.85 seals | 5 | 24.29 |
| Flapjack Island | 11.22 seals | 5 | 56.11 |
| Geikie Rock | 10.25 seals | 5 | 51.25 |
| Lone Island | 17.22 seals | 5 | 86.1 |
| | Total 43.5 (44 seals) | | Total: 218 incidents of harassment |

*Data from 2016 and 2015 NPS gull surveys.

There can be greater numbers of seals on the survey islands than what is detected by the NPS during the gull surveys. Aerial survey maximum counts show that harbor seals sometimes haul out in large numbers at all four locations (see Table 1 of the application). However, harbor seals hauled out at Flapjack Island are generally on the southern end whereas the gull colony is on the northern end. Similarly, harbor seals on Boulder Island tend to haul out on the southern end while the gull colony is located and can be accessed on the northern end without disturbance. Aerial survey counts for harbor seals are conducted during low tide while ground and vessel surveys are conducted during high tide, which along with greater visibility during aerial surveys, may also contribute to why there are greater numbers of seals observed during the aerial surveys.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

Subsistence harvest of harbor seals by Alaska Natives is exempted from the MMPA’s take prohibition (16 U.S.C. 1371(b)(1)); however, subsistence harvest of harbor seals has not been permitted in Glacier Bay NP since 1974 (Catton, 1995). The extensive

post-breeding seasonal distribution of seals from Glacier Bay (Womble and Gende, 2013) may expose seals to subsistence harvest outside of the park. Subsistence surveys and anthropological studies demonstrate that harbor seals may be harvested during all months; however, there are typically two distinct seasonal peaks for harvest of seals, which occur during spring and in autumn/early winter (de Laguna, 1972; Emmons, 1991). These time periods co-occur with the time period during which seals travel beyond the boundaries of Glacier Bay (Womble and Gende, 2013). The level of subsistence harvest on seals from Glacier Bay/Icy Strait stock has not been quantified; however, subsistence reports from nearby communities have documented subsistence harvest (*e.g.*, Wolfe *et al.*, 2009). Due to the prohibition of subsistence harvest at the gull study sites and the temporary behavior disturbance of marine mammal disturbance caused by this project, we anticipate no impacts to subsistence harvest of marine mammals in the region.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Glacier Bay NP has based the mitigation measures, which they will to implement during their research, on the following: (1) protocols used during previous gull research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Womble *et al.* (2010); Richardson *et al.* (1995); Pierson *et*

al. (1998); and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Glacier Bay NP and/or its designees will implement the following mitigation measures for marine mammals:

- Perform pre-survey monitoring before deciding to access a study site;
- Avoid accessing a site where Steller sea lions are present;
- Perform controlled and slow ingress to the study site to prevent flushing

harbor seals and select a pathway of approach to minimize the number of marine mammals harassed;

- Monitor for offshore predators at study sites. Avoid approaching the study site if killer whales (*Orcinus orca*) are observed. If Glacier Bay NP and/or its designees see predators in the area, they must not disturb the pinnipeds until the area is free of predators; and

- Maintain a quiet research atmosphere in the visual presence of pinnipeds.

Pre-Survey Monitoring

Prior to deciding to land onshore to conduct the study, the researchers will use high-powered image stabilizing binoculars from the watercraft to document the number, species, and location of hauled out marine mammals at each island. The vessels will maintain a distance of 100 to 500 meter (m) (328 to 1,640 feet) from the shoreline to allow the researchers to conduct pre-survey monitoring.

Site Avoidance

If there are Steller sea lions are present, the researchers will not approach the island and will not conduct gull monitoring and research.

Controlled Landings

The researchers will determine whether to approach the island based on type of animals present. Researchers will approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 miles per hour). This will provide enough time for any marine mammals present to slowly enter the water without panic (flushing). The researchers will also select a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

Minimize Predator Interactions

If the researchers visually observe marine predators (*i.e.*, killer whales) present in the vicinity of hauled out marine mammals, the researchers will not approach the study site.

Noise Reduction Protocols

While onshore at study sites, the researchers will remain vigilant for hauled out marine mammals. If marine mammals are present, the researchers will move slowly and use quiet voices to minimize disturbance to the animals present.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of affecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammal species or stocks;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of pile driving, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of pile

driving, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, areas of similar significance, and on the availability of such species or stock for subsistence uses.

Monitoring and Reporting

Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA that we must set forth “requirements pertaining to the monitoring and reporting of such taking.” The Act’s implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result

in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Glacier Bay NP submitted a marine mammal monitoring plan in section 13 of their application. Monitoring requirement NMFS prescribes shall improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*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 action; or (4) Biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological);
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock;
- Effects on marine mammal habitat and resultant impacts to marine mammals; and
- Mitigation and monitoring effectiveness.

Glacier Bay NP will conduct marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring. The researchers will monitor the area for pinnipeds during all research activities. Monitoring

activities will consist of conducting and recording observations on pinnipeds within the vicinity of the research areas. The monitoring notes will provide dates, location, species, the researcher’s activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

The method for recording disturbances follows those in Mortenson (1996). Glacier Bay NP will record disturbances on a three-point scale that represents an increasing seal response to the disturbance (Table 4). Glacier Bay will record the time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out. NMFS consider only responses falling into Levels 2 and 3 as harassment under the MMPA, under the terms of this authorization.

Table 4. Seal response to disturbance.

| Level | Type of response | Definition |
|-------|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Alert | Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal’s body length. Alerts would be recorded, but not counted as a ‘take’. |
| 2 | Movement | Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal’s body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees. These movements would be recorded and counted as a ‘take’. |
| 3 | Flush | All retreats (flushes) to the water. Flushing into the water would be recorded and counted as a ‘take’. |

Glacier Bay NP complied with the monitoring requirements under the previous authorizations. NMFS posted the 2016 report on our website at <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm> and the results from the previous Glacier Bay NP monitoring reports support our findings that the mitigation measures required under the 2014 - 2016 Authorizations, provide the means of effecting the least practicable impact on the species or stock. During the last two years of this

activity, approximately a third of all observed harbor seals have flushed in response to these activities (37 percent in 2015 and 36 percent in 2016). In 2016, of the 216 harbor seals that were observed: 77 flushed in to the water, 3 became alert but did not move >1 m, and 17 moved >1 m but did not flush into the water. On five occasions, harbor seals were flushed into the water when islands were accessed for gull surveys. In these instances, the vessel approached the island at very slow speed and most of the harbor seals flushed into the water at approximately 50-100 m. In 4 instances, fewer than 25 harbor seals were present, but in 1 instance, 41 harbor seals were observed flushing into the water when NPS first saw them as they rounded a point of land in kayaks accessing Flapjack Island. In 5 instances, harbor seals were observed hauled out and not disturbed due to their distance from the survey areas. In 2015, of the 156 harbor seals that were observed: 57 flushed in to the water, 25 became alert but did not move >1 m, and zero moved >1 m but did not flush into the water. No pups were observed. On two occasions, harbor seals were observed at the study sites in numbers <25 and the islands were accessed for gull surveys. In these instances, the vessel approached the island at very slow speed and most of the harbor seals flushed into water at approximately 200 m (Geikie 8/5/15) and 280 m (Lone, 8/5/15). In one instance, (Lone, 6/11/15) NPS counted 20 harbor seals hauled out during our initial vessel-based monitoring, but once on the island, NPS observed 33 hauled out seals. When NPS realized the number of seals present, they ceased the survey and left the area, flushing 13 seals into the water.

Glacier Bay NP can add to the knowledge of pinnipeds in the action area 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. Glacier Bay NP actively monitors harbor seals at breeding and molting haul out locations to assess trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.* 2010, Womble and Gende, 2013). This monitoring program involves collaborations with biologists from the Alaska Department of Fish and Game, and the Alaska Fisheries Science Center. Glacier Bay NP will continue these collaborations and encourage continued or renewed monitoring of marine mammal species. Additionally, Glacier Bay NP will report vessel-based counts of marine mammals, branded, or injured animals, and all observed disturbances to the appropriate state and federal agencies.

Reporting

Glacier Bay NP will submit a draft monitoring report to NMFS no later than 90 days after the expiration of the IHA. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization. Glacier Bay NP will submit a final report to NMFS within 30 days after receiving comments on the draft report. If Glacier Bay NP receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.

2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.

3. An estimate of the number (by species) of marine mammals exposed to acoustic or visual stimuli associated with the research activities.

4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), Glacier Bay NP shall immediately cease the specified activities and immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator.

The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Glacier Bay NP shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Glacier Bay NP to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Glacier Bay NP may not resume their activities until notified by us via letter, email, or telephone.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), Glacier Bay NP will immediately report the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator. The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. NMFS will work with Glacier Bay NP to determine whether modifications in the activities are appropriate.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Glacier Bay NP will report the incident to the incident to the Office of Protected Resources, NMFS and the Alaska Regional Stranding Coordinator within 24 hours of the discovery. Glacier Bay NP researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their research activities.

Negligible Impact Analysis and Determinations

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 the authorized number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration, etc.), as well as effects on habitat, the status of the affected stocks, and the likely effectiveness of the mitigation. 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 these analyses via their impacts on the environmental 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).

In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.*, impacts to areas of significance,

impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

- The status of stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Glacier Bay NP's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

1. The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities;

2. The availability of alternate areas for pinnipeds to avoid disturbances from research operations. Anecdotal observations and results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities; and

3. There is little potential for stampeding events or large-scale flushing events leading to injury, serious injury, or mortality. Researchers will not access the survey sites if Steller sea lions are present. Harbor seals are a species that do not stampede, but flush, and injury or mortality is not anticipated from flushing events. Researchers will approach study sites slowly to provide enough time for any marine mammals present to slowly enter the water without panic.

We do not anticipate that any injuries, serious injuries, or mortalities will occur as a result of Glacier Bay NP's activities and we do not authorize injury, serious injury, or mortality. Harbor seals may exhibit behavioral modifications, including temporarily vacating the area during the gull research activities to avoid human disturbance. Further, these activities will not take place in areas of significance for marine mammal feeding, resting, breeding, or pupping and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites during annual gull monitoring. In summary, NMFS anticipates that impacts to hauled-out harbor seals during Glacier Bay NP's research activities would be behavioral harassment of limited duration (*i.e.*, up to two hours per visit) and limited intensity (*i.e.*, temporary flushing at most).

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 planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares

the number of individuals taken to the most appropriate estimation of the relevant species or stock size in our determination of whether an authorization is limited to small numbers of marine mammals.

As mentioned previously, NMFS estimates that Glacier Bay NP's activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (three percent) relative of the Glacier Bay/Icy Strait stock of harbor seals (7,210 seals, see Table 2).

Based on the analysis contained herein of the planned 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.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Glacier Bay NP prohibits subsistence harvest of harbor seals within the Park (Catton, 1995). Thus, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Issuance of an MMPA authorization requires compliance with the ESA. 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.

National Environmental Policy Act

In compliance with NOAA policy, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), NMFS determined the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 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 we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Authorization

NMFS has issued an IHA to the NPS at Glacier Bay NP for the harassment of small numbers of harbor seals incidental to conducting monitoring and research studies on glaucous-winged gulls within Glacier Bay NP, Alaska provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Date: May 23, 2017.

Donna S. Wieting,

Director,

Office of Protected Resources,

National Marine Fisheries Service.

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