**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF869**

# 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:** Notice; proposed incidental harassment authorization; request for comments.

**SUMMARY**: NMFS has received a request from Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California Santa Cruz (UCSC) for authorization to take marine mammals incidental to rocky intertidal monitoring surveys at locations in Oregon and California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

**DATES**: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES**: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Pauline@noaa.gov*.

*Instructions*: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT**: Rob Pauline, 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: *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 (16 U.S.C. 1361 *et seq*.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are

made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

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.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

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).

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321 *et seq*.) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e*., the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (CE B4) (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

**Summary of Request**

On September 26, 2017, NMFS received a request from PISCO for an IHA to take marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. PISCO's request is for take of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardii*), and northern elephant seals (*Mirounga angustirostris*). Take is anticipated to result from the specified activity by Level B harassment only. Neither PISCO nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover one year of a larger project for which PISCO obtained prior IHAs. This multiyear annual survey involves surveying rocky intertidal zones in a number of locations in Oregon and California. NMFS has previously issued five IHAs for this ongoing survey project (77 FR 72327, December 5, 2012; 78 FR 79403, December 30, 2013; 79 FR 73048, December 9, 2014; 81 FR 7319, February 2, 2016; 82 FR 12568, March 6, 2017). PISCO complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous

IHAs and information regarding the most recent monitoring results may be found in the Proposed Monitoring and Reporting section.

**Description of Proposed Activity**

*Overview*

PISCO proposes to continue rocky intertidal monitoring work that has been ongoing for 20 years. PISCO 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 will continue indefinitely. Researchers accessing and conducting research activities on the sites may occasionally cause behavioral disturbance (or Level B harassment) of three pinniped species. PISCO expects that the disturbance to pinnipeds from the research activities will be minimal and will be limited to Level B harassment.

*Dates and Duration*

PISCO's research is conducted throughout the year. Most sites are sampled one to two times per year over a 1-day period (4-6 hours per site) during a negative low tide series. Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Some sampling may occur in all months of the calendar year.

*Specific Geographic Region*

Sampling sites occur along the California and Oregon coasts. Community Structure Monitoring sites range from Ecola State Park near Cannon Beach, Oregon to Government Point located northwest of Santa Barbara, California. Biodiversity Survey sites extend from Ecola

State Park south to Cabrillo National Monument in San Diego County, California. Exact locations of sampling sites can be found in Tables 1 and 2 of PISCO's application.

*Detailed Description of Specific Activity*

Community Structure Monitoring involves the use of permanent photoplot quadrats, which target specific algal and invertebrate assemblages (*e.g.* mussels, rockweeds, barnacles). Each photoplot is photographed and scored for percent cover. The Community Structure Monitoring approach is based largely on surveys that quantify the percent cover and distribution of algae and invertebrates that constitute these communities. This approach allows researchers to quantify both the patterns of abundance of targeted species, as well as characterize changes in the communities in which they reside. Such information provides managers with insight into the causes and consequences of changes in species abundance. There are a total of 48 Community Structure sites, each of which will be visited in 2018 under the proposed IHA and surveyed over a 1-day period during a low tide series one to two times a year.

Biodiversity Surveys are part of a long-term monitoring project and are conducted every 3-5 years across 142 established sites. Nineteen Biodiversity Survey sites will be visited in 2018. These Biodiversity Surveys involve point contact identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements. Five of the Biodiversity Survey sites are also Community Structure sites, leaving 14 sites that are only Biodiversity Survey sites. As such, a total of 62 unique sites would be visited under the proposed IHA.

The intertidal zones where PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out on the shore at or adjacent to some research sites. Pinnipeds have been recorded at 17 out of the 62 survey sites. Accessing portions of the intertidal habitat at

these locations may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see "Proposed Mitigation" and "Proposed Monitoring and Reporting").

**Description of Marine Mammals in the Area of Specified Activities**

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; www.nmfs.noaa.gov/pr/sars/) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS's website (www.nmfs.noaa.gov/pr/species/mammals/).

Table 1 lists all species with expected potential for occurrence at survey sites in California and Oregon and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Managed stocks in this region are assessed in NMFS's U.S. 2016 Pacific Marine Mammal SARs (Carretta *et al.*, 2016). Information on Steller sea lions came from the Alaska Marine Mammal SARs (Muto *et al.*, 2016) All values presented in Table 1 are the most recent available at the time of publication and are available in the 2016 SARs (Carretta *et al.*, 2016; Muto *et al.*, 2016) (available online at: www.nmfs.noaa.gov/pr/sars/draft.htm).

**Table 1. Marine Mammals Potentially Present in the Vicinity of the Study Areas.**

| 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 | *Zalophus californianus* | U.S. | -; N | 296,750 (n/a; 153,337; 2011) | 9,200 | 389 |
| *Steller sea lion* | *Eumetopias jubatus* | Eastern U.S. | -; N | 41,638 (n/a; 41,638; 2015) | 2,498 | 108 |
| Family Phocidae (earless seals) | | | | | | |
| Harbor seal | *Phoca vitulina richardii* | California/ Oregon/Washington | -; N | 30,968 (0.157; 27,348; 2012 [CA])/ 24,732 (n/a; n/a [OR/WA][4] | 1,641 | 43 |
| Northern elephant seal | *Mirounga angustirostris* | California | -; N | 179,000 (n/a; 81,368; 2010) | 4,882 | 8.8 |

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

2- NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case]
3 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.
4 - The most recent abundance estimate is >8 years old, there is no current estimate of abundance available for this stock.
*NOTE - Italicized species are not expected to be taken or proposed for authorization.*

All species that could potentially occur in the proposed survey areas are included in Table 1. As described below, all four species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. However, the temporal and/or spatial occurrence of Steller sea lions is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Past monitoring reports have not typically reported Steller sea lion observations. The last reported observation of Steller sea lions occurred in 2009 when five Steller sea lions were seen at the Cape Arago, OR site.

*Northern Elephant Seal*

Northern elephant seals range widely throughout the eastern Pacific for most of the year to forage. They return to haul-out locations along the west coast of the continental United States including the Channel Islands, the central California coast, and islands off Baja California to breed and molt. Breeding occurs from December through early spring, with males returning to haul-out locations earlier than females to establish dominance hierarchies. Molting occurs from late April to August, with juveniles and adult females returning earlier than adult males (Reeves *et al.*, 2002). Due to very little movement between colonies in Mexico and those in California, the California population is considered to be a separate stock (Carretta *et al.*, 2010).

This species was hunted by indigenous peoples for several thousand years and by commercial sealers in the 1800s. By the late 1800s, the species was thought to be extinct, although several were seen on Guadalupe Island in the 1880s and a few dozen to several hundred

survived off of Mexico (Stewart *et al.,* 1994). The population began increasing in the early 1900s and progressively colonized southern and central California through the 1980s (Reeves *et al.,* 2002).

According to the 2015 Pacific Marine Mammal Stock Assessment, the minimum population size of the California stock is 81,368 individuals and the estimated population size is 179,000 (Carretta *et al.,* 2016, Lowry *et al.,* 2014). This species has grown at 3.8 percent annually since 1988 (Lowry *et al.,* 2014). Northern elephant seals are not listed under the Endangered Species Act (ESA) and are not a strategic species nor considered depleted under the MMPA.

*California Sea Lions*

California sea lions are distributed along the west coast of North America from British Columbia to Baja California and throughout the Gulf of California. Breeding occurs on offshore islands along the west coast of Baja California and the Gulf of California as well as on the California Channel Islands. There are three recognized California sea lion stocks (U.S. stock, Western Baja stock, and the Gulf of California stock) with the U.S. stock ranging from the U.S./Mexico border into Canada. Although there is some movement between stocks, U.S. rookeries are considered to be isolated from rookeries off of Baja California (Barlow *et al.,* 1995).

California sea lions were hunted for several thousand years by indigenous peoples and early hunters. In the early 1900s, sea lions were killed in an effort to reduce competition with commercial fisheries. They were also hunted commercially from the 1920-1940s. Following the passage of the Marine Mammal Protection Act (MMPA) in 1972, as well as limits on killing and harassment in Mexico, the population has rapidly increased (Reeves *et al.,* 2002). Declines in

pup production did occur during the 1983-84, 1992-93, 1997-98, and 2003 El Niño events, but production returned to pre- El Niño levels within 2-5 years (Carretta *et al.,* 2016). In 2013, NOAA declared an Unusual Mortality Event (UME) due to the elevated number of sea lion pup strandings in southern California. The cause of this event is thought to be nutritional stress related to declines in prey availability. This UME has continued through 2016 (NMFS 2016). According to the 2015 Pacific Marine Mammal Stock Assessment, California sea lions have a minimum population size of 153,337 individuals and the population is estimated to number 296,750 (Carretta *et al.*, 2016). This species is not listed under the ESA and is not a strategic species nor considered depleted under the MMPA.

*Pacific Harbor Seal*

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The most recent census of the California stock of harbor seals occurred in 2012 during which 20,109 hauled-out harbor seals were counted. A 1999 census of the Oregon/Washington harbor seal stock found 16,165 individuals, of which 5,735 were in Oregon (Carretta *et al.*, 2016). The population is estimated to number 30,968 individuals in California and 24,732 individuals in Oregon/Washington (Carretta *et al.*, 2016). At several sites, harbor seals are often observed and have the potential to be disturbed by researchers accessing or sampling the site. The largest number of harbor seals occurs at Hopkins in Monterey, CA where often 20-30 adults and occasionally 10-15 pups are hauled-out on a small beach adjacent to the site

The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardii* in the northeast Pacific

Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including the outer coastal waters of Oregon and Washington states, Washington state inland waters and Alaska coastal and inland waters.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). Harbor seals mate at sea, and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations, and rookery size varies from a few pups to many hundreds of pups. Pupping generally occurs between March and June, and molting occurs between May and July.

**Potential Effects of Specified Activities on Marine Mammals and their Habitat**

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The "Estimated Take by Incidental Harassment" section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis and Determination" section considers the content of this section, the "Estimated Take by Incidental Harassment" section, and the "Proposed Mitigation" section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The appearance of researchers may have the potential to cause Level B behavioral harassment of any pinnipeds hauled out at sampling sites. Although marine mammals are never deliberately approached by survey personnel, approach may be unavoidable if pinnipeds are

hauled out in the immediate vicinity of the permanent study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (*e.g.*, turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that flee some distance or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.*, 1985; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999). The Hawaiian monk seal (*Neomonachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon 1972). Moreover, in one case human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon 1962).

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. The three situations are (1) falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of elephant seal pups by large males during a stampede. Note, however, that PISCO researchers have only recorded one instance of stampeding which occurred in 2013.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.*, cliffs). Shoreline habitats near the survey areas tend to consist of steeply sloping rocks with unimpeded and non-obstructive access to the water. Disturbed, hauled-out animals in these situations are likely to move toward the water slowly without risk of unexpectedly falling off cliffs or encountering barriers or hazards or that would otherwise prevent them from leaving the area. Therefore, research activity poses no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations.

Few pups are anticipated to be encountered during the proposed monitoring surveys. A small number of harbor seal, northern elephant seal and California sea lion pups, however, have been observed during past years. Though elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence than the other two species. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. Pups are also typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups.

The only habitat modification associated with the proposed activity is the placement of permanent bolts and other temporary sampling equipment in the intertidal zone. Once a particular study has ended, the respective sampling equipment is removed. No trash or field gear is left at a site. Sampling activities are also not expected to result in any long-term modifications

of haulout use or abandonment of haulouts since these sites are only visited 1-2 times per year, which minimizes repeated disturbances. During periods of low tide (*e.g.*, when tides are 0.6 m (2 ft) or less and low enough for pinnipeds to haul-out), we would expect the pinnipeds to return to the haulout site within 60 minutes of the disturbance (Allen *et al.*, 1985). The effects to pinnipeds appear at the most to displace the animals temporarily from their haul out sites, and we do not expect that the pinnipeds would permanently abandon a haul-out site during the conduct of rocky intertidal surveys. Additionally, impacts to prey species from survey activities are not anticipated. Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

**Estimated Take**

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is "small" and the negligible impact determination.

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers.

Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

*Marine Mammal Occurrence*

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Take estimates are based on historical marine mammal observations at each site from previous PISCO survey activities. Marine mammal observations are done as part of PISCO site observations, which include notes on physical and biological conditions at the site. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day is recorded at the conclusion of sampling. A marine mammal is counted if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site. Marine mammals in the water immediately offshore are also recorded. Any other relevant information, including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

*Take Calculation and Estimation*

The observations described above formed the basis from which researchers with extensive knowledge and experience at each site estimated the actual number of marine mammals that may be subject to take. Take estimates for each species for which take would be authorized were based on the following equation:

Take estimate per survey site = (number of expected animals per site * number of survey days per survey site)

For take estimates, PISCO looked at sites that have consistently had a marine mammal

presence and used the maximum number of marine mammals previously observed at these sites that could be subject to take (*e.g*. pinnipeds on the site, nearby, or along access ways and not including any pinnipeds in the water or on offshore rocks). At many sites, the number of marine mammals is quite variable and PISCO may observe fewer than the number used for take estimates. There are also limited occasions where PISCO observes pinnipeds at sites where they had not previously seen any.

Individual species' totals for each survey site were summed to arrive at a total estimated take number. Numbers are rounded up to the nearest value of 5 (*e.g*., a maximum of 7 observed animals would be rounded up to 10). Section 6 in PISCO's application outlines the number of visits per year for each sampling site and the potential number of pinnipeds anticipated to be encountered at each site. Tables 2, 3, 4 in PISCO's application outlines the number of potential takes per site.

Harbor seals are expected to occur at 15 locations with expected taken numbers ranging from 5 to 25 animals per visit (Table 2 in PISCO's application). These locations will be subject to 21 site visits under the proposed IHA. It is anticipated that there will be 190 takes of adult harbor seals and 13 takes of weaned pups. Therefore, NMFS proposes to authorize the take of up to 203 harbor seals.

California sea lions are expected to be present at five sites with eight scheduled visits as shown in Table 3 in the application. Eighty-five adult and five pups are expected to be taken. Therefore, NMFS proposes to authorize the take of 90 California sea lions.

Northern elephant seals are only expected to occur at one site this year, Piedras Blancs, which will experience two separate visits (See Table 4 in application). Up to 10 adult and 40 weaned pup takes are anticipated. Therefore, NMFS proposes to authorize the take of up to 50

northern elephant seals.

NMFS proposes to authorize the take, by Level B harassment only, of 203 harbor seals, 90 California sea lions, and 50 northern elephant seals. These numbers are considered to be maximum take estimates; therefore, actual take may be less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

**Proposed Mitigation**

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such 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, we carefully consider two primary factors:

1) the manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if

implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

PISCO will implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures are listed below.

- Researchers will observe a site from a distance, 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 Steller sea lions are present; 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 way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush 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 (*i.e.*, using hushed voices) and keep bodies low to the ground in the visual presence of pinnipeds.
- Researches will monitor the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters. Note that PISCO has never observed an offshore predator while researchers were present at any

of the survey sites.

- Intentional flushing 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.
- To avoid take of Steller sea lions, any site where they are present will not be approached and will be sampled at a later date. Note that observation of sea lions at survey sites is extremely rare.
- Researchers will promptly vacate sites at the conclusion of sampling.

The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, 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. Also, by 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.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed 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.

**Proposed Monitoring and Reporting**

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking.

The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; 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.

PISCO 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.

Proposed monitoring requirements in relation to PISCO's rocky intertidal monitoring will include observations made by the applicant. 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. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 2. Note that only observations of disturbance Levels 2 and 3 should be recorded as takes.

**Table 2. Levels of Pinniped Behavioral Disturbance.**

| Level | Type of response | Definition |
|---|---|---|
| 1 | Alert | Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. |
| 2 | Movement | Movements 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 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 are also noted. This information will be incorporated into a monitoring report for NMFS.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, PISCO 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).

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

In the event that an injured or dead marine mammal is discovered and it is determined 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), PISCO 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 IHA.

Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with PISCO 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 IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), PISCO 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. PISCO shall provide photographs, video footage or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2018 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS West Coast Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

*Monitoring Results from Previously Authorized Activities*

PISCO complied with the mitigation and monitoring that were required under the IHA issued in February 2016. In compliance with the IHA, PISCO submitted a report detailing the activities and marine mammal monitoring they conducted. The IHA required PISCO 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.

From December 3, 2016, through February 2, 2017 researchers conducted rocky intertidal sampling at numerous sites in California and Oregon (see Table 12 in PISCO's 2016 monitoring report). Tables 7, 8, and 9 in PISCO's monitoring report outline marine mammal observations and reactions. During this period there were 96 takes of harbor seals, 1 take of California sea lions, and 22 takes of northern elephant seals. NMFS had authorized the take of 203 harbor seals, 720 California sea lions, and 40 Northern Elephant seals under that IHA. PISCO also submitted a preliminary monitoring report associated with the existing IHA for the period covering February 21, 2017 through November 30, 2017. PISCO recorded 63 takes of harbor seals and 3 takes of California sea lions. There were no takes of northern elephant seals. NMFS had authorized the take of 233 harbor seals, 90 California sea lions, and 60 northern elephant seals under the existing IHA.

Based on the results from the monitoring report, we conclude that these results support our original findings that the mitigation measures set forth in the 2016 and 2017 IHAs 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 from the disturbance scale (Table 2) 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-haulout farther up-coast or down-coast of the site within approximately 30 minutes of the disturbance.

**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 responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), 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's 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 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).

No injuries or mortalities are anticipated to occur as a result of PISCO's rocky intertidal monitoring surveys and none are proposed to be authorized. The risk of marine mammal injury, serious injury, or mortality associated with rocky intertidal monitoring increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (*e.g.*, through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the

injury, serious injury, or mortality of the pups. Few pups are anticipated to be encountered during the proposed surveys. As shown in previous monitoring reports, however, limited numbers of harbor seal, northern elephant seal, and California sea lion pups have been observed at several sites during past years. Harbor seals are very precocious with only a short period of time in which separation of a mother from a pup could occur. Although elephant seal pups are occasionally present when researchers visit survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence compared to the other two species. Further, elephant seal pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. The caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of pups. Finally, no research would occur where separation of mother and her nursing pup or crushing of pups can become a concern.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term behavioral disturbance. In any given study season, researchers will visit select sites one to two times per year for 4-6 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 3-5 years.

Of the marine mammal species anticipated to occur in the proposed 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 in the intertidal zone. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from PISCO's rocky intertidal monitoring program will not adversely affect annual rates of recruitment or survival and, therefore, will have a negligible impact on the affected species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No pinniped 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; and
- Effectiveness of proposed mitigation measures.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine

mammal take from the proposed activity will have a negligible impact on 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, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

**Table 3. Population abundance estimates, total proposed Level B take, and percentage of population that may be taken for the potentially affected species during the proposed rocky intertidal monitoring program.**

| Species | Abundance* | Total Proposed Level B Take | Percentage of Stock or Population |
|---|---|---|---|
| Harbor seal | 30,968[1]<br>24,732[2] | 203 | <0.65 – 0.82 |
| California sea lion | 296,750 | 90 | <0.01 |
| Northern elephant seal | 179,000 | 50 | <0.01 |

*Abundance estimates are taken from the 2016 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.*, 2016).
[1] California stock abundance estimate;
[2] Oregon/Washington stock abundance estimate from 1999-Most recent surveys

Table 3 presents the abundance of each species or stock, the proposed take estimates, and the percentage of the affected populations or stocks that may be taken by Level B harassment. The numbers of animals authorized to be taken would be considered small relative to the relevant stocks or populations (0.65 – 0.82 percent for harbor seals, and <0.01 percent for California sea lions and northern elephant seals).

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

preliminarily finds that small numbers of marine mammals will 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 preliminarily 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)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. § 1531 *et seq*.) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division whenever we propose to authorize take for endangered or threatened species.

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

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to PISCO for conducting the described research activities related to rocky intertidal monitoring surveys along the Oregon and Washington coasts provided the previously described mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the

IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This IHA is valid from February 21, 2018 through February 20, 2019.

2. This IHA is valid only for specified activities associated with rocky intertidal monitoring surveys at specific sites along the California and Oregon coasts.

3. General Conditions

a. A copy of this IHA must be in the possession of personnel operating under the authority of this authorization.

b. The incidental taking of marine mammals, by Level B harassment only, is limited to the following species along the Oregon and California coasts:

i. 203 harbor seal (*Phoca vitulina richardii*);

ii. 90 California sea lion (*Zalophus californianus*);

iii. 50 northern elephant seal (*Mirounga angustirostris*); and

c. The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the IHA or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

4. Mitigation Measures: The holder of this IHA is required to implement the following mitigation measures:

a. Researchers shall observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required.

b. Researchers shall approach a site with caution (slowly and quietly), keep bodies low to the ground and avoid pinnipeds along access ways to sites, by locating and taking a different access way if possible.

c. Researchers shall keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush 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).

d. Researchers shall monitor the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters.

e. Intentional flushing shall be avoided if pups are present. 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.

f. Any site where Steller sea lions are present shall not be approached and shall be sampled at a later date.

g. Personnel shall vacate the study area as soon as sampling of the site is completed.

5. Monitoring: The holder of this IHA is required to conduct monitoring of marine mammals present at study sites prior to approaching the sites.

a. Information to be recorded shall include the following:

i. Species counts (with numbers of pups/juveniles);

ii. Descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event;

iii. Information regarding physical and biological conditions pertaining to a site; and

iv. Numbers of disturbances, by species and age, according to a three-point scale of intensity as described in Table 2. Observations of disturbance Levels 2 and 3 are recorded as takes.

6. Reporting: The holder of this IHA is required to:

a. Report observations of unusual behaviors, numbers, or distributions of pinnipeds, or of tag-bearing carcasses, to NMFS Southwest Fisheries Science Center (SWFSC).

b. Submit a draft monitoring report to NMFS Office of Protected Resources within 60 days after the conclusion of the 2018 field season or 60 days prior to the start of the next field season if a new IHA shall be requested. A final report shall be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. This report must contain the informational elements described above, at minimum.

c. Reporting injured or dead marine mammals:

i. In the event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, PISCO 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).

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

ii. In the event that an injured or dead marine mammal is discovered and it is determined 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), PISCO 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 6(c)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS shall work with PISCO to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. 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 IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), PISCO 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. PISCO shall provide photographs, video footage or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

7. This IHA may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

**Request for Public Comments**

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the proposed rocky intertidal monitoring program. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year renewal IHA without additional notice when 1) another year of identical or nearly identical activities as described in the Specified Activities section is planned, or 2) the activities would not be completed by the time the IHA expires and renewal would allow completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

  (1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements.

  (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor

changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: January 17, 2018.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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