



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XG831**

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California**

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

**ACTION:** Notice; issuance of an incidental harassment authorization renewal.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) Renewal to the St. George Reef Lighthouse Preservation Society (Society) to harass marine mammals incidental to aircraft operations, lighthouse renovations, and tour operations associated with preservation of the St. George Reef Lighthouse Station (Station) on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean.

**DATES:** This IHA Renewal is valid from April 10, 2019 through April 9, 2020.

**FOR FURTHER INFORMATION CONTACT:** Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. In case of problems accessing these documents, please call the contact listed above.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361 *et seq.*) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA 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, notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,”

“harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e), indicate that IHAs may be renewed for additional periods of time, not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential Renewal IHA under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year IHA renewal 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 a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA. All of the following conditions must be met in order to issue a Renewal:

- 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 ; and
  - (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 initial findings remain valid.

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

### **History of Request**

On April 13, 2018, NMFS issued an IHA to the Society to take marine mammals incidental to the lighthouse maintenance and preservation project at NWSR, Del Norte County, California (83 FR 19254, May 2, 2018), effective from February 19, 2018 through February 18, 2019. On December 6, 2018, NMFS received an application for the Renewal of the initial IHA. As described in the application for renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. Notice of the proposed IHA Renewal was published in the **Federal Register** on March 7, 2019 (84 FR 8312).

## **Description of the Specified Activities and Anticipated Impacts**

The Station is located on NWSR offshore from Crescent City, California in the northeast Pacific Ocean. NWSR rises approximately 5.18 meters (m) (17 feet (ft)) above sea level. Because NWSR has no safe landing for boats, the islet is accessed only by helicopter. The Society visits the Station to conduct lighthouse renovations and periodic maintenance on the Station's optical light system, as well as public tours of the historic lighthouse. Station visits occur one weekend per month (Friday, Saturday, and Sunday), from November through April. The following specific aspects of the Society's activities will likely result in the take of marine mammals: acoustic and visual stimuli from (1) helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.*, painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.*, bulb replacement and automation of the light system); and (4) human presence. These activities are identical to those analyzed in the initial IHA issued by NMFS, described in detail in the **Federal Register** notice of proposed IHA (83 FR 8841, March 1, 2018). As in the initial authorization, NMFS anticipates that take, by Level B harassment only, of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*) of the eastern U.S. Stock, and northern fur seals (*Callorhinus ursinus*) could result from the specified activity (83 FR 19254, May 2, 2018).

### *Description of the Activity and Specific Geographic Region*

A detailed description of the restoration, maintenance, and tour operations for which take is authorized may be found in the Notices of the Proposed and Final IHAs for the initial authorization (83 FR 8841, March 1, 2018; 83 FR 19254, May 2, 2018), along with the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8312; March 7,

2019). The location (as described in the *Specific Geographic Region* section of the initial IHA), timing, amount, and nature of the specified activities, including the types of equipment planned for use, are identical to those described in the previous notices.

#### *Description of Marine Mammals*

As noted in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8312; March 7, 2019), a description of the marine mammals in the area of the activities for which incidental take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** Notice of the Proposed IHA for the initial authorization (83 FR 8841, March 1, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The draft 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the section *Description of Marine Mammals in the Area of Specified Activities* contained in the supporting documents for the initial IHA.

#### *Potential Effects on Marine Mammals and their Habitat*

As noted in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8312; March 7, 2019), the description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here is found in the **Federal Register** Notice of the Proposed IHA for the initial authorization (83 FR 8841, March 1, 2018). All of that information and analysis remain applicable and valid. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock

Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that no new information affects our initial analysis of potential impacts on marine mammals and their habitat.

### **Public Comments**

A notice of NMFS' proposal to issue a Renewal IHA to the Society was published in the Federal Register on March 7, 2019 (84 FR 8312). That notice both included information and referenced information from the initial IHA Federal Register notices on the Society's activities and the specific geographic region; the marine mammal species that had the potential to be affected by the activity; the potential effects on marine mammals and their habitat; the proposed amount and manner of take; the proposed mitigation, monitoring and reporting measures; and the preliminary determinations. We also sent direct notice to any party that had submitted comments on the initial IHA. NMFS received one comment letter, which was from the Marine Mammal Commission (Commission). The Commission provided comments as described below, concurred with NMFS's preliminary determinations, and recommended the issuance of the Renewal IHA to the Society, subject to the inclusion of the mitigation, monitoring, and reporting measures.

*Comment:* The Commission questioned whether the public notice provisions for IHA Renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers of reviewing key documents and developing comments quickly. Therefore the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

*Response:* NMFS has taken a number of steps to ensure the public has adequate notice, time, and information to be able to comment effectively on IHA Renewals within the limitations of processing IHA applications efficiently. The Federal Register notice for the initial proposed IHA had previously identified the conditions under which a one-year Renewal IHA might be appropriate. This information is presented in the *Request for Public Comments* section of the initial IHA proposal (citation) and thus encourages submission of comments on the potential of a one-year renewal as well as the initial IHA during the 30-day comment period. In addition, when we receive an application for a Renewal IHA, we publish notice of the proposed IHA Renewal in the Federal Register and provide an additional 15 days for public comment, making a total of 45 days of public comment. We will also directly contact all commenters on the initial IHA by email, phone, or, if the commenter did not provide email or phone information, by postal service to provide them the opportunity to submit any additional comments on the proposed Renewal IHA.

NMFS also strives to ensure the public has access to key information needed to submit comments on a proposed IHA, whether an initial IHA or a Renewal IHA. The agency's website includes information for all projects under consideration, including the application, references, and other supporting documents. Each Federal Register notice also includes contact information in the event a commenter has questions or cannot find the information they seek.

Regarding the Commission's comment that Renewal IHAs should be limited to certain types of projects, NMFS has explained on its website and in individual Federal Register notices that Renewal IHAs are appropriate where the continuing activities are

identical, nearly identical, or a subset of the activities for which the initial 30-day comment period applied. Where the commenter has likely already reviewed and commented on the initial proposed IHA for these activities, the abbreviated additional comment period is sufficient for consideration of the results of the preliminary monitoring report and new information (if any) from the past year.

*Comment:* In order to increase efficiencies, the Commission recommended that NMFS authorize the incidental taking of marine mammals for the Society's future activities via an MMPA rulemaking rather than individual IHAs and IHA Renewals.

*Response:* We appreciate the interest that the Commission has shown in our efforts to streamline the MMPA authorization process. NMFS will discuss with the applicant the option of entering into a rulemaking for future incidental take authorizations.

### **Authorized Take**

Detailed descriptions of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** Notices of the Proposed and Final IHAs for the initial authorization (83 FR 8841, March 1, 2018; 83 FR 19254, May 2, 2018). Specifically, the number of days of operation and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Accordingly, all methodology and analysis in the Federal Register notices for the proposed and final initial IHA remain applicable and accurate, as explained in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8312; March 7, 2019). We therefore determine that the species and stocks affected, methods of take, and types of take remain unchanged from the initial IHA, as do the number of takes for each

species, which are indicated below in Table 1.

In their 2018 monitoring report, the Society reported a total of 40 takes of California sea lions, three takes of Steller sea lions, and zero takes of northern fur seals and harbor seals from four visits to NWSR. All takes qualified as Level B harassment in the form of behavioral disturbance. These take numbers fall far below the take authorized in the initial IHA (83 FR 19254, May 2, 2018) and the identical numbers authorized in this IHA Renewal, which are indicated below.

**Table 1. Authorized Take of Marine Mammals.**

| <b>Species</b>   | <b>Maximum Observed per Day</b> | <b>Days of Proposed Activity</b> | <b>Estimated Take</b> | <b>Stock Abundance</b> | <b>Percent of Stock</b> |
|--|---------------------------------|----------------------------------|-----------------------|------------------------|-------------------------|
| California sea lion<br>( <i>Zalophus californianus</i> ) | 160                             | 18                               | 2,880                 | 257,606                | 1.1                     |
| Steller sea lion<br>( <i>Eumetopias jubatus</i> )        | 155                             | 18                               | 2,790                 | 41,638                 | 6.7                     |
| Pacific harbor seal<br>( <i>Phoca vitulina</i> )         | 2                               | 18                               | 36                    | 30,968                 | 0.35                    |
| Northern fur seal<br>( <i>Callorhinus ursinus</i> )      | 1                               | 18                               | 18                    | 14,050                 | 0.12                    |

*Description of Required Mitigation, Monitoring, and Reporting Measures*

As explained in the **Federal Register** Notice of the Proposed IHA Renewal (84 FR 8312; March 7, 2019), a complete discussion of mitigation, monitoring, and reporting measures under the MMPA, as well as the specific mitigation, monitoring, and reporting measures appropriate for the Society’s activities, was provided in the **Federal Register** Notices of the Proposed IHA (83 FR 8841; March 1, 2018) and Final IHA. (83 FR 19254,

May 2, 2018) for the initial IHA. All of that discussion remains applicable and valid for this renewal IHA. Additionally, the discussion of least practicable adverse impact included in those documents remains accurate. NMFS therefore determined that the mitigation, monitoring, and reporting measures included as requirements in the **Federal Register** Notice announcing the issuance of the initial IHA (83 FR 19254, May 2, 2018) are appropriate and would be continued in this Renewal IHA. The following measures, which are identical to those in the initial IHA, are included in the Renewal IHA:

The Society will conduct restoration and touring activities at a maximum of once per month over the course of the year, with the exception of between May 1, 2019 through October 31, 2019 when no restoration or touring activities would occur (barring potential emergency light repairs during this time). Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities (except if an emergency light repair is needed from May 1, 2019 through October 31, 2019).

The Society will ensure that its helicopter approach patterns to the Station and timing techniques are conducted at times when marine mammals are less likely to be disturbed. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haul out on NWSR. Additionally, since the most severe impacts (stampede) precede rapid and direct helicopter approaches, the Society's initial approach to the station must be offshore from the island at a relatively high altitude (*e.g.*, 800 – 1,000 ft, or 244 – 305 m). Before the final approach, the helicopter must circle lower and approach from the area with the lowest pinniped density. If for any safety reasons (*e.g.*, wind condition) the Society cannot conduct these types of helicopter

approach and timing techniques, they must postpone the restoration and maintenance activities for that day.

The Society is required to instruct its members and restoration crews to avoid making unnecessary noise and avoid visual detection by pinnipeds around the base of the station. Although Crescent Coastal Research reported no impacts from these activities in a 2001 study (CCR 2001), it is relatively simple for the Society to avoid this potential impact. The door to the lower platform must remain closed and barricaded to all tourists and other personnel since the lower platform is used at times by pinnipeds.

A NMFS-approved, experienced biologist must be present on the first flight of each day of the activity. This observer must be able to identify all species of pinnipeds expected to use the island, and qualified to determine age and sex classes when viewing conditions allow. The observer will record data including species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the activities, including location, date, and time of the event. In addition, the Society will record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

Aerial photographic surveys provide an accurate means of documenting species composition, age, and sex class of pinnipeds using the project site during human activity periods. The Society must complete aerial photo coverage from the same helicopter used to transport the Society's personnel to the island during restoration trips. The Society will take photographs of all marine mammals hauled out on the island from an altitude greater than 300 m (984 ft) by a skilled photographer, on the first flight of each day of activities. These photographs will be forwarded to a biologist capable of discerning marine mammal

species. The following shall be provided to NMFS: data in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see below). The original photographs will be made available to NMFS or other marine mammal experts for inspection and further analysis, if requested.

The Society is required to submit a draft report to NMFS' Office of Protected Resources no later than 90 days after the conclusion of restoration activities in April. The report must include a summary of the information gathered pursuant to the monitoring requirements described here and set forth in the final IHA. The Society must submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the Society receives no comments from NMFS on the draft 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 must provide:

1. A summary and table of the dates, times, and weather during all 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 human presence associated with the Society's activities; and
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

### **Findings and Determinations**

The lighthouse restoration, maintenance, and public tour activities conducted by the Society are identical to those analyzed in the initial IHA, as are the number of days of

activity, the method of taking, and the effects of the action. The potential effects of the Society's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Society's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*i.e.*, less than 7 percent of all stocks). The numbers of marine mammals authorized in this Renewal IHA are identical to those authorized in the initial IHA. The mitigation measures and monitoring and reporting requirements as described above also are identical to the initial IHA.

All of the information and analysis from the initial IHA remains applicable and valid for the findings and determinations under this Renewal IHA. In addition, there is no new information that substantively affects or suggests that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of California sea lions decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the authorized takes will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by these activities; and (5) appropriate monitoring and reporting requirements are included.

## **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 (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 determined that the issuance of the Renewal IHA qualifies to be categorically excluded from further NEPA review.

## **Endangered Species Act**

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.

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.

## **IHA Renewal**

NMFS has issued an IHA Renewal that includes the previously described mitigation, monitoring, and reporting requirements to the Society for the harassment of small numbers of four species of marine mammals incidental to conducting lighthouse restoration, maintenance, and public tour operations at NWSR once per month, from November through April.

Dated: April 10, 2019.

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Donna S. Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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