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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XR059]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase II in California

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

ACTION: Notice; Issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to California Department of Fish and Wildlife (CDFW) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the second phase of the tidal marsh restoration project in Elkhorn Slough, California.

DATES: This Authorization is effective from June 1, 2020 through May 31, 2021.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, 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: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq*.) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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 in shorthand as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On August 14, 2019, NMFS received a request from CDFW for an IHA to take marine mammals incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase II; *i.e.*, using heavy equipment to restore 58 acres of saltmarsh habitat. The application was deemed adequate and complete on November 4, 2019. CDFW's request is for take of a small number of Pacific harbor seals (*Phoca vitulina richardii*) by Level B harassment only. Neither CDFW nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. A proposed IHA was published on December 31, 2019 (84 FR 72308).

NMFS previously issued an IHA to CDFW for related work (Phase I of the Elkhorn Slough Tidal Marsh Restoration Project; 82 FR 16800; April 6, 2017). CDFW complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the **Estimated Take** section.

This IHA will cover one year of a larger project for which CDFW obtained the prior IHA; they intend to request take authorization for subsequent phases of the project. The larger project involves restoring 147 acres of vegetated tidal salt marsh, upland ecotone, and native grasslands in Monterey County in response to years of anthropogenic degradation (*e.g.*, diking and marsh draining).

Description of Specified Activity

Phase II plans to restore 58 acres of saltmarsh habitat in two areas, by using heavy equipment to relocate up to 276,000 cubic yards of soil from an upland area south of the Minhoto-Hester Restoration Area, within an 11 month work period. This includes 53-

acres of subsided marsh within the Minhoto-Hester (sub-areas M4a-b, M5, and M6 in Figure 1) and Seal Bend Restoration Areas (subareas S1-S4); 2 acres of tidal channels; and an additional 3 acres of intertidal salt marsh created at an upland borrow area. To restore hydrologic function to the project area they plan to raise the subsided marsh plain, maintaining or re-excavating the existing tidal channels, and excavating within the upland buffer area to restore marsh plain, ecotone, and native grassland habitat. Sediment would be placed to a fill elevation slightly higher than the target marsh plain elevation, permitting settlement and consolidation of the underlying soils. The average fill depth would be .64 meter (2.1 feet), including 25 percent overfill.

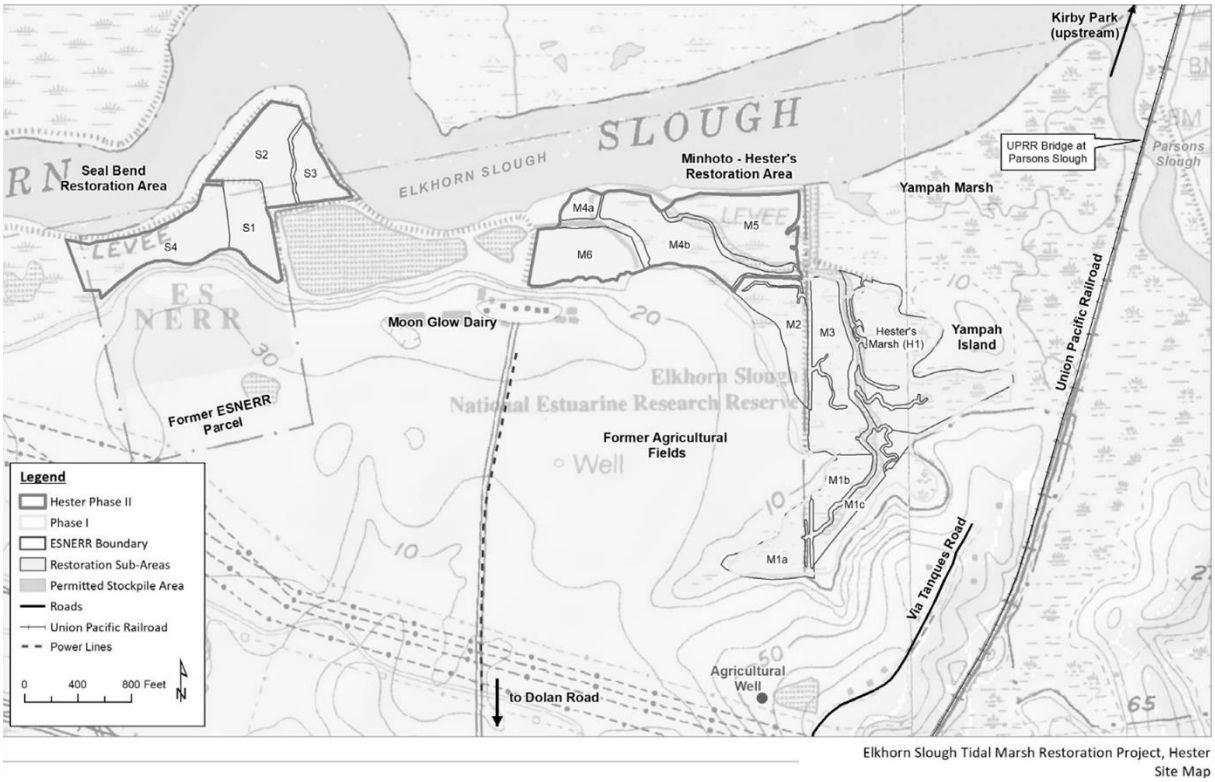

Figure 1 – Overview of Elkhorn Slough Tidal Marsh Restoration Project

Construction sequencing would begin with water management and/or turbidity control measures constructed around the work areas prior to placing material on the marsh. Water control structures, such as temporary berms, would be utilized to isolate the fill placement area during the construction period. Existing berms would be used, where possible, and tidal channels in this area will be blocked to allow construction in non-tidal conditions. When sediment placement is completed, any temporary features, such as water management berms, would be removed; *i.e.*, the berms would be lowered to the target marsh elevation, reintroducing tidal inundation. At the end of each stage of construction, any elevated haul roads and/or berms constructed to aid in material placement would be excavated to design grades, with the resulting earth used to fill adjacent restoration areas.

A detailed description of the planned Elkhorn Slough Tidal Marsh Restoration Project, Phase II is provided in the **Federal Register** notice for the proposed IHA (84 FR 72308; December 31, 2019). Since that time, no changes have been made to the planned construction work activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

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

Comments and Responses

A notice of NMFS's proposal to issue an IHA to CDFW was published in the **Federal Register** on December 31, 2019 (84 FR 72308). That notice described, in detail, CDFW's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment

period, NMFS received a comment letter from the Marine Mammal Commission (Commission). For full detail of the Commission's recommendations and supporting rationale, please see the letter (available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-tidal-marsh-restoration-project-elkhorn-slough-phase-ii-2020*).

Comment 1: The Commission described concerns with the estimated take rationale and recommends that NMFS authorize up to 417 harbor seals being taken on up to 180 days of proposed activities.

Response: We agree there were problems with the estimated take determination in the proposed IHA notice. CDFW subsequently provided the raw monitoring data from Phase I. NMFS learned there was a misunderstanding of terms and inadequate information to provide a full data set for Table 5 from the Proposed IHA. From the raw data we determined harbor seals could potentially be taken up to a distance of 300 m from construction activity. The phase I data observations were recorded as within different habitat grids and without exact distance from the construction activity. NMFS determined that the observation data from the grids within the Minhoto area provide the best estimate of harbor seals present within 300 m of Phase I's activities. The data gathered for Phase I and used in the proposed IHA included animals from a much farther distance away that were not really available to be taken. Therefore, NMFS used the observation data from Phase I's Minhoto area to calculate the abundance and fraction of animals potentially exposed to Level B harassment. We then calculated the percent take of seals from Phase I activities using these data (8.79 percent) rather than using the data from all sites (2 percent), as was done in the Proposed IHA. The estimated take increased accordingly. Please refer to the **Estimated Take** section below for more details.

Comment 2: The Commission recommended that NMFS: (1) specify that all construction activities would be required to be conducted during daylight hours only and remove any references to in-water activities; (2) require that, if poor environmental conditions restrict the full visibility of the shut-down zone, construction activities be delayed; (3) require that, if a pup less than one week of age comes within 20 m of heavy equipment, activities be delayed and remove any references to only a pup; (4) include the relevant reporting measures for injured and dead marine mammals; (5) include the specific data that CDFW would be required to collect before, during, and after each day's activities and require that all such data and the Protected Species Observer (PSO) sightings datasheets be included in CDFW's monitoring report; and (6) include NMFS's current definitions of Level 1, 2, and 3 responses.

Response: NMFS concurs with these recommendations and changed the final authorization to reflect these changes.

Comment 3: The Commission recommended that NMFS: (1) require that CDFW delay or cease activities, if the number of takes that have been authorized is met or if a species for which takes were not granted is observed in the project area and (2) ensure that the CDFW keeps a running tally of the total takes to ensure that the number of authorized takes are not exceeded.

Response: NMFS agrees that CDFW must ensure they do not exceed authorized takes. As is typical in such authorizations, we have included a requirement in the IHA that "activities must cease if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized number of takes have been met, is observed by PSOs approaching or within the Level B harassment zone.

Activities must not resume until the animal is confirmed to have left the area." However, NMFS is not responsible for ensuring that CDFW does not operate in violation of an issued IHA.

Comment 4: The Commission recommends that NMFS require CDFW to use at least two PSOs to monitor the restoration areas, with at least one PSO at Seal Bend and one at Minhoto–Hester Marsh, if construction activities occur simultaneously. CDFW also should be cognizant of documenting disturbance of harbor seals hauled out on the tidal flats across the main channel from where the construction activities would occur.

Response: We agree that all Level B harassment zones must be monitored and that may require two PSOs if work is occurring simultaneously at both sites. We have added the following text to the IHA to clarify this requirement: "If multiple construction activities occur simultaneously, enough PSOs must be on duty to monitor all Level B Harassment zones."

Comment 5: The Commission reiterates programmatic recommendations regarding NMFS' potential use of the renewal mechanism for one-year IHAs; that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process.

Response: NMFS disagrees with the Commission's recommendations, as stated in our previous comment responses relating to other actions, which we incorporate herein by reference.

Deleted comments

Changes from the Proposed IHA to Final IHA

Corrections have been made to the estimated take determination process and take table as discussed in the response to comment 1 above (see also **Estimated Take** section and Table 7 for more details).

Upon reviewing the raw data of the required monitoring during Phase I, the Level B harassment zone for Phase II has been increased from 100 m to 300 m from construction activities to align with the distance at which take occurred during phase I. The Level B harassment zone is defined as the area within 300 m of where construction activities occur. Monitoring is now required when construction activities occur either, (1) in water or (2); within the boundaries of the two tidal restoration areas, Minhoto-Hester and Seal Bend, identified in Figure 1. Monitoring must occur every other day when work is occurring, rather than every day of construction activities within 100 m of tidal waters. Monitoring must occur every fifth day when work is occurring near the "borrow" areas, where marsh fill material is gathered, unless the borrow area is more than 300 m from any area where marine mammals have been observed.

To accommodate for the reduction of monitoring, the monitoring report must include an extrapolation of the estimated takes by Level B harassment based on the number of observed disturbances within the Level B harassment zone and the percentage of time the Level B harassment zone was not monitored; *i.e.*, 50 percent of time for the two restoration areas and 80 percent of the time for the borrow and other areas.

The Pinniped Behavioral Disturbance Code Reactions (Table 8) have been updated to reflect NMFS's current language. The **Mitigation** and **Monitoring and Reporting** sections were updated to accurately coincide with the standard conditions in the final IHA.

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 (SARs; https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (*e.g.*, physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in Elkhorn Slough and summarizes information related to the population or stock, including regulatory status under the MMPA and the Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). 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. All managed stocks in this region are assessed in NMFS's U.S. Marine Mammal SARs (*e.g.*, Carretta *et al*. 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al*., 2019) and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

Table 1—Harbor Seal Status Information

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]
Family Phocidae (earless seals)						
Pacific Harbor Seal	*Phoca vitulina richardii*	California	-;N	30,968 seals (CV=0.157,Nmin=27,348, 2012)	1,641	43

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; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

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.

A detailed description of the of the species likely to be affected by Phase II of the Elkhorn Slough Tidal Marsh Restoration project, including brief introductions to the species and relevant stocks, as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (84 FR 72308; December 31, 2019); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice

for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

The main impact to marine mammal habitat associated with the CDFW's restoration project is the temporary exclusion from the accustomed haulout areas. During the restoration, the inability of seals to use suitable habitat within the footprint of the construction area will temporarily remove less than two percent of the potential haulout areas in the Slough (see Figure 4-4 of the application). Although the action will permanently alter habitat within the footprint of the construction area, harbor seals haul out in many locations throughout the estuary, and the activities are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual harbor seals or their population.

CDFW's construction activities have the potential to cause behavioral harassment to seals that may be hauling out, resting, foraging, or engaging in other activities either inside or near the project area. The **Federal Register** notice of the proposed IHA (84 FR 72308; December 31, 2019) included a discussion of the effects of anthropogenic noise and visual disturbance on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the **Federal Register** notice (84 FR 72308; December 31, 2019) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of "small numbers" 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 will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the stressor/s – pedestrian traffic, biological monitors, construction workers, and use of heavy machinery. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

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

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water or air that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a

basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment for non-explosive sources – Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.*, frequency, predictability, duty cycle), the environment (*e.g.*, bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Ellison *et al.*, 2012, Southall *et al.*, 2007). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa), (rms) for continuous (*e.g.*, vibratory

pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 μPa (rms).

CDFW's Elkhorn Slough Tidal Marsh Restoration Project, Phase II includes the use of intermittent (construction activities) airborne noise and visual disturbances, and therefore the 90 dB re 20 μPa (rms) threshold is applicable. We note, however, that the take estimates (described in detail below) are based on occurrence in the general area, rather than within any specific isopleth.

As indicated above, no Level A harassment is anticipated or authorized.

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.

Data on harbor seal use near the project area is derived from marine mammal monitoring data collected by the Reserve Otter Monitoring Project (ESNERR 2018) and Phase I construction monitoring (Fountain *et al.,* 2019).

The Reserve Otter Monitoring Project has been monitoring otter movement and behavior in Elkhorn Slough since 2011. This effort has been a collaboration between Elkhorn Slough National Estuarine Research Reserve (ESNERR), Monterey Bay Aquarium, United State Geologic Survey and University of California Santa Cruz. In January of 2018, they added seals to their observations, and have compiled monitoring data for seals through April 2019. During this time period, biologists conducted weekly

monitoring at nine locations along Elkhorn Slough and five locations in Moss Landing Harbor (see Figure 4 in the application). Seal and otter counts were completed every Tuesday, every half hour on the hour and half hour, from 10 a.m.-12 p.m. Eight teams were positioned concurrently throughout the estuary using high-powered binoculars and scopes to see otters and seals. Data collected included weather, observation time, tide, the number and species of marine mammal sited, and the location they were observed. All monitoring was completed by or under the supervision of a qualified biologist previously approved by USFWS and NMFS for marine mammal monitoring.

Figure 5 (from the application) and Table 2 below, summarizes the maximum number of seals observed by location on the highest day of counts via monitoring on a single day of monitoring, June 19, 2018. In addition, the maximum and average number

Table 2—Harbor Seal Counts by Reserve Otter Monitoring Project

Location[1]	Highest Daily Count[2]	Hourly Counts[3]	
		Maximum	Average
Harbor	88	—	—
Wildlife	59	106	41
Seal Bend	56	86	24
Moonglow	0	87	16
Hester	0	33	5
Main Channel	93	100	30
Yampah	1	81	18
Avila	120	122	32
Total	**417**	**615**	**166**

[1] See Figure 4 (from application) for location of observation areas.
[2] Represents highest count of seals recorded on a single day, June 19, 2018, during hourly counts.
[3] Represents maximum and average number or seals observed during an hourly count at each location from monitoring dates between January 2018 and April 2019 by Reserve Otter Monitoring Project.

of seals observed during hourly counts at each of the seven monitored locations proximate to the Phase II restoration areas over the 16-month observation period (*i.e.*, January 2018 to April 2019) are also presented. Since the maximum and average seal counts were collected from various days between January 2018 and April 2019, duplicate counts (*i.e.*, recording the same seal more than once), are considered highly probable. These data are consistent with previous population estimates by McCarthy (2010), who estimated the population of seals in Elkhorn Slough at 300 to 500, with seasonal variability based on prey availability, molting and reproduction. The data also illustrate that seals tend to move between areas proximate to each other. For example, when large numbers of seals were observed in Parsons Slough ("Avila") in the summer of 2018, there was a comparable decline in the number of seals observed at Seal Bend (see Figure 5 in the application).

During Phase I construction, marine mammal monitoring was required and implemented on 89 days (976 hours of monitoring) within the 9-month construction window. An average of 75 seals were recorded by marine mammal monitors in the observation area at any given time, and up to 257 individual seals were observed near the Phase I restoration area in a given day. Nineteen incidents of Level B harassment of harbor seals (flushing or movement) were recorded by the monitors. Of these, 16 incidents, representing harassment of 62 individual seals, were attributed to construction activity or marine mammal monitoring; the remaining 3 incidents were unrelated to the

project (*e.g.*, seals flushing as a result of a passing boat in Elkhorn Slough). When Level B harassment occurred, it was always when seals were within a range of 500 meters of the disturbance source; the majority of reactions were when distances were 100 meters or less (Fountain *et al.*, 2019). In addition, not all seals located in the vicinity of the disturbance flushed or moved during each discrete incident. For example, in nine incidents, less than one third of the seals present in the area flushed.

Regarding the presence of pups during Phase I, Table 3 depicts the maximum number of pups observed during hourly counts by month. This metric conservatively represents the highest number of pups that could have been disturbed by project-related activities (including by monitoring observers) at a given time. Table 4 summarizes all occasions where monitors observed seal pups reacting to Phase I project-related activities

Table 3— Maximum Number of Pups Observed During Hourly Counts by Month During Phase I Construction

Month	No. of Pups
2017	
December	5
2018	
January	6
February	9
March	4
April	7
May	15
June	5
July	9
August	9

— typically sound. All responses were observed at a 100m distance from project-related activities; caused by either a monitor or construction activities.

Table 4—Phase I Harbor Seal Pup Disturbance Data

Date	Reaction	Trigger	Total No. Seals	Total No. Seals	No. Pups Reacted

			Present	Reacted[1]	
4/11/18	Flush	Monitor (Visual)	18	6	3
4/11/18	Flush	Construction (Sound)	12	2	1
4/11/18	Flush	Construction (Sound)	10	2	1
4/11/18	Flush	Construction (Sound)	10	2	1
4/12/18	Alert	Construction (Sound and Visual)	17	2	1
5/01/18	Flush	Monitor (Visual)	3	3	1
[1] Includes all seals (adults, pups) that reacted to project-related disturbance.					

No takes by Level A harassment, serious injury, or mortality are expected, or authorized, from the disturbance associated with the construction activities. It is unlikely a stampede (a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus) would occur nor the abandonment of pups. The primary spots used for nursing and resting for mother/pup pairs has been the entrance to Parson Slough, which is ~610 m east of Minhoto-Hester restoration area and will not be affected by construction activities (personal communication, J Harvey 2019). Pacific harbor seals have been hauling out in the project area and within the greater Elkhorn Slough throughout the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound sources such as recreational vessel traffic, the Union Pacific Railroad (UPRR), and other stimuli from human presence. The number of harbor seals disturbed would likely also fluctuate depending on time day and tidal stage. Fewer harbor seals will be present in the early morning and approaching evening hours as seals leave the haulout site to feed, and they are also not present when the tide is high and the haulout area is inundated.

Take Calculation and Estimates

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Incidental take is calculated using the estimated number of seals that will be present in project area during construction activities and the anticipated percentage of those seals that will be taken based on monitoring for Phase I. As described above, using the observation data from Minhoto rather than that of all collection sites provides the best estimate of seals within the 300 m potential effect area of Phase I's activities. The average percentage of seals taken in a day is represented in the following equation:

$$\text{Average Percentage of Seals Taken} = \frac{\text{Total \# Of Seals Taken in Phase I}}{\text{Sum of Daily Average \# of Seals Observed Hourly in Minhoto during Phase I}}$$

The percentage calculated (8.79 percent) was then rounded up to 9 percent and used to calculate the daily take estimate. Daily take estimates are based on the average percentage of Level B disturbance observed during Phase 1 construction (percent of seals taken) multiplied by the expected number of animals in the project area on a daily basis. Upon review of CDFW's prior monitoring data, NMFS decided to assume the maximum number of seals observed in a single day (417) at the seven monitoring locations conservatively reflects the maximum possible number of seal that could be exposed to disturbance daily. Therefore, The daily take estimate is then the product of the average percentage of seals taken in a day (9 percent) and the number of seals that could be exposed to disturbance daily (417). Thus the daily take estimate is 37.53.

The total authorized take was determined by multiplying the daily take estimate (37.53) by the number of construction days (180) for Phase II of the restoration project and rounding (Table 5).

Table 5—Calculated Take and Percentage of Stock Exposed

	Authorized Take		
Species	**Level B**	**Level A**	**% population[4]**
Pacific Harbor Seal	417[1] max seals/day(9%[2])(180 days[3])= 6755	0	1.3%

1. Maximum number of seals observed/day between January 2018 and April 2019 by Reserve Otter Monitoring Project
2. % Take from Phase I
3. Number of construction days
4. Data from U.S. Pacific Marine Mammal Stock Assessments: 2015 (Carretta *et al.,* 2015)

All estimates are considered conservative. Construction activities will occur in sections, and some sections (*e.g.* S1-S4) are further away from seal haulouts (approximately 100 m and greater). Noise from construction activities in more southern sections may thus cause fewer disturbances to seals. There are unlikely to be 417 animals in the project area on any given day. Not all seals that previously used the haulouts within the footprint of the construction will use the haulouts just outside the project. Some seals may seek alternative haul out habitat in other parts of Elkhorn Slough.

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.

The following mitigation measures are detailed in the IHA:

Timing Restrictions

All work must be conducted during daylight hours when visual monitoring of marine mammals can be implemented. If environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain), construction must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Visual Monitoring

Required monitoring must be conducted by dedicated, trained, NMFS-approved PSO(s). PSOs shall establish a Level B harassment zone within 300 m of all construction activities. When construction activities occur either, (1) in water or (2); within the boundaries of the two tidal restoration areas, Minhoto-Hester and Seal Bend identified in Figure 1, monitoring must occur every other day when work is occurring.

When construction activities occur near the "borrow" areas where marsh fill material is gathered, monitoring must occur every fifth day when work is occurring, unless the borrow area is more than 300 m from any area where marine mammals have been observed. Occurrence of marine mammals within the Level B harassment zone must be communicated to the construction lead to prepare for the potential shutdown when required.

Pre-construction clearance and Ramp-up

A 30-minute pre-clearance observation period must occur prior to the start of ramp-up and construction activities. CDFW must adhere to the following pre-clearance and ramp-up requirements: (i) Construction activities must not be initiated if any marine mammal is within 10 m of planned operations. If a marine mammal is observed within 10 m of planned operations during the 30-minute pre-clearance period, ramp-up must not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species), (ii) The construction contractor must begin construction activities gradually each day (*e.g.*, ramp up by moving around the project area and starting equipment sequentially).

Shutdown Requirements

For heavy machinery work, if a marine mammal comes within 10 m of such operations, operations must cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Pupping Season – Construction activities may not be initiated: (1) within 300 m of a mom/pup pair that is hauled out, or (2) within 100 m of a mom/pup pair in the water. If there is a gap in construction activities of more than an hour or if construction moves to a different area, this initiation protocol must again be implemented. During site containment activities that are underway, heavy machinery must not approach closer than 100 m of where mothers and pups are actively hauled out. If a pup less than one week old (neonate) comes within 20 m of where heavy machinery is working, construction activities in that area must be shutdown or delayed until the pup has left the area. In the event that a pup less than one week old remains within those 20 m, NMFS will be consulted to determine the appropriate course of action.

Activities must cease if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized number of takes have been met, is observed by PSOs approaching or within the Level B harassment zone. Activities must not resume until the animal is confirmed to have left the area.

Construction Activities

A NMFS approved PSO must conduct biological resources awareness training for construction personnel. The awareness training will be provided to brief construction personnel on identification of marine mammals (including neonates) and the need to avoid and minimize impacts to marine mammals. If new construction personnel are

added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

Construction activities must not be initiated if any marine mammal is within 10 m of planned operations. If a marine mammal is observed within 10 m of planned operations during the 30-minute pre-clearance period, ramp-up must not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species). Furthermore, the PSO will have the authority to stop project activities if marine mammals approach or enter the Level B Harassment Zone and/or at any time for the safety of any marine mammals. Work will commence only with approval of the PSO to ensure that no marine mammals are present in the Level B Harassment Zone.

Ramp Up

To reduce the risk of potentially startling marine mammals with a sudden intensive sound, the construction contractor must begin construction activities gradually each day by moving around the project area and starting machinery one at a time.

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

Monitoring and Reporting

In order to issue an 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 planned 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).
- Mitigation and monitoring effectiveness.

Protected Species Observers

PSOs shall be used to detect, document, and minimize impacts to marine mammals, as well as, communicate with and instruct relevant construction crew with regard to the presence of marine mammals and mitigation requirements. Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods must be used. Biological monitoring will begin 30 minutes before work begins and will continue until 30 minutes after work is completed each day.

PSOs will be placed at the best vantage point(s) practicable to monitor for marine mammals within the Level B harassment zone, defined above. If multiple construction activities occur simultaneously, enough PSOs must be on duty to monitor all Level B Harassment zones.

Qualifications for PSOs for visual monitoring include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of harbor seals on land or in the water with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a

waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties;

- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates and times when construction activities were suspended to avoid potential incidental injury from construction sound or visual disturbance of marine mammals observed; and marine mammal behavior;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;

(a) PSOs must be provided with the equipment necessary to effectively monitor for marine mammals in order to record species, the distance from species'

location to the construction activities, behaviors, and responses to construction activities;

(b) The PSO must also conduct biological resources awareness training for construction personnel. The awareness training will be provided to brief construction personnel on identification of marine mammals (including neonates) and the need to avoid and minimize impacts to marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

Monitoring requirements also include:

Pre-Activity Monitoring

Pre and post construction daily censuses - A census of marine mammals in the project area and the area surrounding the project must be conducted 30 minutes prior to the beginning of construction on monitoring days, and again 30 minutes after the completion of construction activities. The following data will be collected:

- Environmental conditions (weather condition, tidal conditions, visibility, cloud cover, air temperature and wind speed
- Numbers of each marine mammal species spotted
- Location of each species spotted, including distance from construction activity
- Status (in water or hauled out)
- Behavior

Hourly Counts - Conduct hourly counts of animals hauled out and in the water within, at least, the Level B harassment zone.

Data collected must include:

- Numbers of each species;
- Location, including whether inside the Level B harassment zone; whether hauled out or in the water; and distance from construction activities (+/- 10 m);
- Time;
- Tidal conditions;
- Time construction activities start and end;
- Primary construction activities occurring during the past hour ;
- Any noise or visual disturbance;
- Number of mom/pup pairs and neonates observed;
- Notable behaviors, including foraging, grooming, resting, aggression, mating activity, and others;

Notes should include any of the following information to the extent it is feasible to record:

- Age-class;
- Sex;
- Unusual activity or signs of stress;
- Any other information worth noting;

Construction Related Reactions

Record reaction observed in relation to construction activities including:

- Tally of each reaction;
- Time of reaction;

- Concurrent construction activity;
- The assumed cause (whether related to construction activities or not) shall be noted;
- Disturbance must be recorded according to NMFS' three-point pinniped disturbance scale (see Table 7);
- Location of animal during initial reaction and distance from the noted disturbance;
- Activity before and after disturbance;
- Status (in water or hauled out) before and after disturbance.

Table 7–Pinniped Behavioral Disturbance Code Reactions

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 in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report must include full documentation of methods, results, and interpretation pertaining to all monitoring. It shall also include marine mammal observations pre-activity, during-activity, and post-activity of construction, and shall also provide descriptions of any behavioral responses by marine mammals due to disturbance

from construction activities and a complete description of total take estimate based on the number of marine mammals observed during the course of construction. The report must include an extrapolation of the estimated takes by Level B harassment based on the number of observed disturbances within the Level B harassment zone and the percentage of time the Level B harassment zone was not monitored; *i.e.*, 50 percewnt of time for the two restoration areas and 80 percent of the time for the borrow and other areas. If comments are received from the NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter following resolution of comments on the draft report from NMFS. If no comments are received from NMFS, the draft report will be considered to be the final report. This report must contain the informational elements described above.

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).

Construction activities associated with this project have the potential to disturb or displace marine mammals. No serious injury or mortality is expected or authorized, and with mitigation we expect to avoid any potential for Level A harassment as a result of the Seal Bend and Minhoto-Hester Marsh construction activities. The specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from visual disturbance and/or noise from construction activities. The project area is within a portion of the local habitat for harbor seals of the greater Elkhorn Slough and seals are present year-round. Behavioral disturbances that could result from anthropogenic sound or visual disturbance associated with these activities are expected to affect only a small amount of the total population, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. Harbor seals may avoid the area or halt any behaviors (*e.g.*, resting) when exposed to anthropogenic noise or visual disturbance. Due to the abundance of suitable haul out habitat available in the greater Elkhorn Slough, the short-term displacement of resting harbor seals is not expected to affect the overall fitness of any individual animal.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be

limited to reactions such as displacement from the area or disturbance during resting. The construction activities analyzed here are similar to, or less impactful than for Parson's Slough (and other projects), which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of noise or visual disturbance at these levels, though they may cause Level B harassment, are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, 24 hour cycle). Behavioral reactions (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al*., 2007). However, Pacific harbor seals have been hauling out at Elkhorn Slough during the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound and visual sources such as vessel traffic, UPRR trains, and human voices from kayaking. Harbor seals have repeatedly hauled out to rest (inside and outside the project area) or pup (outside of the project area) despite these potential stressors. The activities are not expected to result in the alteration of reproductive or feeding behaviors. Seals are primarily foraging outside of Elkhorn Slough and at night in Monterey Bay, outside the project area, and during times when construction activities are not occurring.

Pacific harbor seals, as the potentially affected marine mammal species under NMFS jurisdiction in the action area, are not listed as threatened or endangered under the ESA and NMFS SARs for this stock have shown that the population is increasing and is considered stable (Carretta *et al*., 2016). Even repeated Level B harassment of some

small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. The restoration of the marsh habitat will have no adverse effect on marine mammal habitat, but possibly a long-term beneficial effect on harbor seals by improving ecological function of the slough, inclusive of higher species diversity, increased species abundance, larger fish, and improved habitat.

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

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment is anticipated or authorized;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- Primary foraging and reproductive habitat are outside of the project area and the construction activities are not expected to result in the alteration of habitat important to these behaviors or substantially impact the behaviors themselves. There is alternative haul out habitat just outside the footprint of the construction area, along the main channel of Elkhorn Slough, and in Parson's Slough, preferred in recent years for pupping (personal communication, J. Harvey 2019), that will be available for seals while some of the haul outs are inaccessible;
- Restoration of the marsh habitat will have no adverse effect on marine mammal habitat, but possibly a long-term beneficial effect;

- Presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable impact; and
- These stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only short-term effects on a relatively small portion of the entire California stock. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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 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 Sections 101(a)(5)(A) and (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.

Here, the authorized take comprises approximately 1.3 percent of the abundance of the California stock of harbor seals based on the estimate of 417 seals in the project area. The total authorized take (6755) reflects the number of disturbances potentially caused by the Phase II project activities, not the number of individual seals disturbed. An animal can only be counted as "taken" once a day; however, the PSO is not able to identify duplicate counts of the same animal. Animals taken on different days are also not likely to be different individuals as the population is resident. Thus, the total authorized take includes many duplicate counts of the same animal.

Therefore, 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 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 determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq*.) and NOAA Administrative Order (NAO) 216-6A, NMFS must evaluate our proposed action (*i.e*., the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment. This action is consistent with categories of activities

identified in Categorical Exclusion B4 of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the proposed action qualifies to be categorically excluded from further NEPA review.

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 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.

Authorization

As a result of these determinations, NMFS has issued an IHA to CDFW for the potential harassment of small numbers of harbor seals incidental to the Phase II of the Elkhorn Slough Tidal Marsh Restoration Project in Elkhorn Slough located in Monterey County, CA, provided the previously mentioned mitigation, monitoring and reporting are completed.

Dated: March 10, 2020.

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Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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