

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XC283

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

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

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

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Partnership for Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California (UC) Santa Cruz to take marine mammals, by harassment, incidental to rocky intertidal monitoring surveys.

**DATES:** Effective December 3, 2012, through December 2, 2013.

**ADDRESSES:** A copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:****Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to

harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking, other means of effecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “\* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: “Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].”

**Summary of Request**

On July 18, 2012, NMFS received an application from PISCO for the taking of marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. NMFS determined that the application was adequate and complete on September 11, 2012. On October 19, 2012, we published a notice in the **Federal Register** of our proposal to issue an IHA with preliminary determinations and explained the basis for the proposal and preliminary determinations (77 FR 64320). The notice initiated a 30-day public comment period. Responses are discussed below.

The research group at UC Santa Cruz operates in collaboration with two large-scale marine research programs: PISCO and the Multi-agency Rocky Intertidal Network. The research group at UC Santa Cruz (PISCO) is responsible for many of the ongoing rocky intertidal monitoring programs along the Pacific coast. Monitoring occurs at rocky intertidal sites, often large bedrock benches, from the high intertidal to the water’s edge. Long-term monitoring projects include Community Structure Monitoring, Intertidal Biodiversity Surveys, Marine Protected Area Baseline Monitoring, Intertidal Recruitment Monitoring, and Ocean Acidification. Research is conducted throughout the year along the California and Oregon coasts and will continue indefinitely. Most sites are sampled one to three times per year over a 4–6 hour period during a negative low tide series. This IHA is only effective for a 12-month period. The following specific aspects of the activities are likely to result in the take of marine mammals: Presence of survey personnel near pinniped haulout sites and approach of survey personnel towards hauled out pinnipeds. Take, by Level B harassment only, of individuals of three species of marine mammals is anticipated to result from the specified activity.

**Description of the Specified Activity and Specified Geographic Region**

PISCO focuses on understanding the nearshore ecosystems of the U.S. west coast through a number of interdisciplinary collaborations. PISCO integrates long-term monitoring of ecological and oceanographic processes at dozens of sites with experimental work in the lab and field. A short description is contained here. Additional information can be found in PISCO’s application (see **ADDRESSES**) and the Notice of Proposed IHA (77 FR 64320, October 19, 2012).

Community Structure Monitoring involves the use of permanent photoplot quadrats which target specific algal and invertebrate assemblages (e.g. mussels, rockweeds, barnacles). This project provides managers with insight into the causes and consequences of changes in species abundance. Each Community Structure site is surveyed over a 1-day period during a low tide series one to three times a year. Sites, location, number of times sampled per year, and typical sampling months for each site are presented in Table 1 in PISCO’s application (see **ADDRESSES**).

Biodiversity Surveys, which are part of a long-term monitoring project and are conducted every 3–5 years at established sites, involve point contact

identification along permanent transects, mobile invertebrate quadrat counts, sea star band counts, and tidal height topographic measurements. Table 2 in PISCO's application (see **ADDRESSES**) lists established biodiversity sites in Oregon and California.

In September 2007, the state of California began establishing a network of Marine Protected Areas along the California coast as part of the Marine Life Protection Act (MLPA). Under baseline monitoring programs funded by Sea Grant and the Ocean Protection Council, PISCO established additional intertidal monitoring sites in the Central Coast (Table 3 in PISCO's application), North Central Coast (Table 4 in PISCO's application), and South Coast (Table 5 in PISCO's application) study regions.

Intertidal recruitment monitoring collects data on invertebrate larval recruitment on a monthly basis at two central California sites. Mussel and other bivalve recruits are collected in mesh pot-scrubbers bolted into the substrate. Barnacle recruits and cyprids are collected on PVC plates covered in non-slip tape and bolted to the substrate.

The Ocean Margin Ecosystems Group for Acidification Studies is a National Science Foundation funded project that involves research at eight sites along the California Current upwelling system from Southern California into Oregon. PISCO is responsible for research at two of these sites, Hopkins and Terrace Point, located in the Monterey Bay region of mainland California. The intention of this collaboration is to monitor oceanic pH on large spatial and temporal scales and to determine if any relationship exists between changing ocean chemistry and the states of two key intertidal organisms, the purple urchin and the California mussel.

#### *Specified Geographic Location and Activity Timeframe*

PISCO's research is conducted throughout the year along the California and Oregon coasts. Figures 1 through 4 in PISCO's application depict regularly sampled sites. Red stars in the figures indicate sites where pinnipeds are found during monitoring survey activities. Most sites are sampled one to three times per year over a 1-day period (4–6 hours per site) during a negative low tide series. Due to the large number of research sites, scheduling constraints, the necessity for negative low tides and favorable weather/ocean conditions, exact survey dates are variable and difficult to predict. Table 1 in PISCO's application (see **ADDRESSES**) outlines the typical sampling season for the various

locations. Some sampling is anticipated to occur in all months, except for January, August, and September.

The intertidal zones where PISCO conducts intertidal monitoring are also areas where pinnipeds can be found hauled out on the shore at or adjacent to some research sites. Accessing portions of the intertidal habitat may cause incidental Level B (behavioral) harassment of pinnipeds through some unavoidable approaches if pinnipeds are hauled out directly in the study plots or while biologists walk from one location to another. No motorized equipment is involved in conducting these surveys. The species for which Level B harassment is authorized are: California sea lions (*Zalophus californianus californianus*); harbor seals (*Phoca vitulina richardii*); and northern elephant seals (*Mirounga angustirostris*).

#### **Comments and Responses**

A Notice of Proposed IHA was published in the **Federal Register** on October 19, 2012 (77 FR 64320) for public comment. During the 30-day public comment period, NMFS received one letter from the Marine Mammal Commission (MMC). No other organizations or private citizens provided comments on the proposed issuance of an IHA for this activity.

*Comment:* The MMC notes that the take table in the application underestimated the number of takes based on the take estimation method within the text. If that problem is fixed, then the MMC concurs with NMFS' preliminary finding and recommends that NMFS issue the requested IHA (1) with the proposed mitigation and monitoring measures and (2) after revising the number of takes in the take table to be consistent with the take estimation method in the text of the application.

*Response:* NMFS has included all of the mitigation and monitoring measures proposed in the Notice of Proposed IHA (77 FR 64320, October 19, 2012) in the issued IHA. Additionally, NMFS has corrected the take estimates noted in Table 7 of PISCO's application to match the text contained on pages 16–18 of the application. Specific changes that were made to the table include the removal of takes of northern elephant seals at Sea Ranch and Hopkins. The northern elephant seal takes at Hopkins were correctly moved to the harbor seal pup columns in the table to account for the potential presence of harbor seal pups at that location. Take events per year were increased to three at Stillwater and Government Point and to two events per year at Carmel Point and Piedras

Blancas. A small number of harbor seal pup takes are now included for Carmel Point. Now that these corrections have been made, the take levels outlined in the table match with those described in the text. Table 1 in this document reflects the correct number of authorized take, by Level B harassment, for each species.

#### **Description of Marine Mammals in the Area of the Specified Activity**

Several pinniped species can be found along the California and Oregon coasts. The three that are most likely to occur at some of the research sites are California sea lion, harbor seal, and northern elephant seal. None of these species are listed as threatened or endangered under the U.S. Endangered Species Act (ESA) or as depleted under the MMPA. On rare occasions, PISCO researchers have seen very small numbers (i.e., five or fewer) of Steller sea lions at one of the sampling sites. These sightings are rare. Therefore, encounters are not expected. However, if Steller sea lions are sighted before approaching a sampling site, researchers will abandon approach and return at a later date. For this reason, this species is not considered further in this IHA.

We refer the public to Carretta *et al.* (2011) for general information on these species which are presented below this section. The publication is available on the internet at: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf>. Additional information on the status, distribution, seasonal distribution, and life history can also be found in PISCO's application and NMFS' Notice of Proposed IHA (77 FR 64320, October 19, 2012). The information has not changed and is therefore not repeated here.

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 2 km (1.2 mi) of shore. This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this notice.

#### **Potential Effects of the Specified Activity on Marine Mammals**

The appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out at sampling sites. Although marine mammals are never deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent study plots. Disturbance may result in reactions ranging from an

animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 m (3.3 ft) or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment. NMFS' Notice of Proposed IHA (77 FR 64320, October 19, 2012) contains information regarding potential impacts to marine mammals from the specified activity. The information has not changed and is therefore not repeated here.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season, researchers will visit sites one to three times per year for a total of 4–6 hours per visit. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

NMFS does not anticipate that the activities would result in the injury, serious injury, or mortality of pinnipeds because pups are only found at a couple of the sampling locations during certain times of the year and that many rookeries occur on the offshore islands and not the mainland areas where the activities would occur. In addition, researchers will exercise appropriate caution approaching sites, especially when pups are present and will redirect activities when pups are present.

#### **Anticipated Effects on Marine Mammal Habitat**

The only habitat modification associated with the activity is the placement of permanent bolts and other sampling equipment in the intertidal. Bolts are installed during the set-up of a site and, at existing sites, this has

already occurred. In some instances, bolts will need to be replaced or installed for new plots. Bolts are 7.6 to 12.7 cm (2 to 5 in) long, stainless steel 1 cm ( $\frac{3}{8}$  in) Hex or Carriage bolts. They are installed by drilling a hole with a battery powered DeWalt 24 volt rotary hammer drill with a 1 cm ( $\frac{3}{8}$  in) bit. The bolts protrude 1.3–7.6 cm (0.5–3 in) above the rock surface and are held in place with marine epoxy. Although the drill does produce noticeable noise, researchers have never observed an instance where near-by or offshore marine mammals were disturbed by it. Any marine mammal at the site would likely be disturbed by the presence of researchers and retreat to a distance where the noise of the drill would not increase the disturbance. In most instances, wind and wave noise also drown out the noise of the drill. The installation of bolts and other sampling equipment is conducted under the appropriate permits (Monterey Bay National Marine Sanctuary, California State Parks). Once a particular study has ended, the respective sampling equipment is removed. No trash or field gear is left at a site. Thus, the activity is not expected to have any habitat-related effects, including to marine mammal prey species, that could cause significant or long-term consequences for individual marine mammals or their populations.

#### **Mitigation**

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, 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 (where relevant).

PISCO shall implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include: (1) Conducting slow movements and staying close to the ground to prevent or minimize stampeding; (2) avoiding loud noises (i.e., using hushed voices); (3) avoiding pinnipeds along access ways to sites by locating and taking a different access way and vacating the area as soon as sampling of the site is completed; (4) monitoring the offshore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters; (5) using binoculars

to detect pinnipeds before close approach to avoid being seen by animals; (6) only flushing pinnipeds if they are located in the sampling plots and there are no other means to accomplish the survey (however, flushing must be done slowly and quietly so as not to cause a stampede); (7) no intentional flushing if pups are present at the sampling site; and (8) rescheduling sampling if Steller sea lions are present at the site.

The methodologies and actions noted in this section will be utilized and are included as mitigation measures in the IHA to ensure that impacts to marine mammals are mitigated to the lowest level practicable. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. In no case will marine mammals be deliberately approached by survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. In general, researchers will stay inshore of pinnipeds whenever possible to allow maximum escape to the ocean. Each visit to a given study site will last for approximately 4–6 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of researchers. By arriving before low tide, worker presence will tend to encourage pinnipeds to move to other areas for the day before they haul out and settle onto rocks at low tide.

PISCO will suspend sampling and monitoring operations immediately if an injured marine mammal is found in the vicinity of the project area and the monitoring activities could aggravate its condition.

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

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

- the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- the practicability of the measure for applicant implementation.

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

### Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, 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 ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

PISCO can add to the knowledge of pinnipeds in California and Oregon by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Monitoring requirements in relation to PISCO's rocky intertidal monitoring include observations made by the applicant. Information recorded will include species counts (with numbers of pups/juveniles when possible), numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. In addition, observations regarding the number and species of any marine mammals observed, either in the water or hauled out, at or adjacent to the site, will be recorded as part of field observations during research activities. Observations of unusual behaviors, numbers, or distributions of pinnipeds will be reported to NMFS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to NMFS. Information

regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted will also be noted.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the research, PISCO will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the 2012–2013 field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS Southwest Office Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

### Estimated Take by Incidental Harassment

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

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. Animals hauled out close to the actual survey sites may be disturbed by the presence of biologists and may alter their behavior or attempt to move away from the researchers.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the researcher's presence or if the animal was already moving and

changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed.

For the purpose of this IHA, only Oregon and California sites that are frequently sampled and have a marine mammal presence during sampling were included in take estimates. Sites where only Biodiversity Surveys are conducted were not included due to the infrequency of sampling and rarity of occurrences of pinnipeds during sampling. In addition, Steller sea lions are not included in take estimates as they will not be disturbed by researchers or research activities since activities will not occur or be suspended if Steller sea lions are present. A small number of harbor seal and northern elephant seal pup takes are anticipated as pups may be present at several sites during spring and summer sampling.

Takes estimates are based on marine mammal observations from each site. Marine mammal observations are done as part of PISCO site observations, which include notes on physical and biological conditions at the site. The maximum number of marine mammals, by species, seen at any given time throughout the sampling day is recorded at the conclusion of sampling. A marine mammal is counted if it is seen on access ways to the site, at the site, or immediately up-coast or down-coast of the site. Marine mammals in the water immediately offshore are also recorded. Any other relevant information, including the location of a marine mammal relevant to the site, any unusual behavior, and the presence of pups is also noted.

These observations formed the basis from which researchers with extensive knowledge and experience at each site estimated the actual number of marine mammals that may be subject to take. In most cases the number of takes is based on the maximum number of marine mammals that have been observed at a site throughout the history of the site (2–3 observation per year for 5–10 years or more). Section 6 in PISCO's application outlines the number of visits per year for each sampling site and the potential number of pinnipeds anticipated to be encountered at each site.

Since receipt of PISCO's application and publication of the Notice of Proposed IHA, PISCO has indicated that one of the sampling sites, Occulto (34.88122, -120.63954), has developed a small presence of adult harbor seals. This site is visited three times per year for Community Structure Monitoring. Based on this small presence, PISCO

and NMFS estimate that there may be up to five takes of adult harbor seals per event with up to three events per year. This slight increase in the amount of adult harbor seal takes is small and does not change the overall percentage of the population taken by Level B behavioral harassment. Additionally, it does not alter the analysis supporting NMFS' preliminary determinations and was considered and evaluated by NMFS prior to making final determinations in advance of its final decision on issuance of the IHA.

Based on this information, NMFS has authorized the take, by Level B harassment only, of 56 California sea lions, 487 harbor seals, and 30 northern elephant seals. These numbers are considered to be maximum take estimates; therefore, actual take may be slightly less if animals decide to haul out at a different location for the day or animals are out foraging at the time of the survey activities.

**Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined "negligible impact" in 50 CFR 216.103 as " \* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

No injuries or mortalities are anticipated to occur as a result of PISCO's rocky intertidal monitoring, and none are authorized. The behavioral harassments that could occur would be of limited duration, as researchers only conduct sampling one to three times per year at each site for a total of 4–6 hours per sampling event. Therefore, disturbance will be limited to a short duration, allowing pinnipeds to reoccupy the sites within a short amount of time.

Some of the pinniped species may use some of the sites during certain times of year to conduct pupping and/or breeding. However, some of these species prefer to use the offshore islands for these activities. At the sites where pups may be present, PISCO will implement certain mitigation measures, such as no intentional flushing if

dependent pups are present, which will avoid mother/pup separation and trampling of pups.

Of the three marine mammal species anticipated to occur in the activity areas, none are listed under the ESA. Table 1 in this document presents the abundance of each species or stock, the authorized take estimates, and the percentage of the affected populations or stocks that may be taken by harassment. Based on these estimates, PISCO would take less than 1.6% of each species or stock. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present.

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 required mitigation and monitoring measures, NMFS finds that the rocky intertidal monitoring program will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the rocky intertidal monitoring program will have a negligible impact on the affected species or stocks.

**TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIALLY AFFECTED SPECIES DURING THE ROCKY INTERTIDAL MONITORING PROGRAM**

Species	Abundance *	Total authorized level B take	Percentage of stock or population
Harbor Seal .....	30,196	487	1.6
California Sea Lion .....	296,750	56	0.02
Northern Elephant Seal .....	124,000	30	0.02

\* Abundance estimates are taken from the 2011 U.S. Pacific Marine Mammal Stock Assessments (Carretta *et al.*, 2012).

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

There are no relevant subsistence uses of marine mammals 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.

**Endangered Species Act (ESA)**

None of the marine mammals for which incidental take is authorized are listed as threatened or endangered under the ESA. NMFS' Permits and Conservation Division worked with the NMFS Southwest Regional Office to ensure that effects to Steller sea lions would be avoided and incidental take would not occur. Therefore, NMFS has

determined that issuance of the IHA to PISCO under section 101(a)(5)(D) of the MMPA will have no effect on species listed as threatened or endangered under the ESA.

**National Environmental Policy Act (NEPA)**

NMFS has prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to PISCO to take marine mammals incidental to conducting rocky intertidal monitoring surveys along the California and Oregon coasts. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an Environmental Impact Statement is not necessary.

**Authorization**

As a result of these determinations, NMFS has authorized the take of marine mammals incidental to PISCO's rocky intertidal monitoring research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 30, 2012.

**Matthew J. Brookhart,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–29390 Filed 12–4–12; 8:45 am]

**BILLING CODE 3510–22–P**