

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

RIN 0648–XD503

**Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will conduct a question and answer session via webinar with NMFS's Marine Recreational Information Program (MRIP).

**DATES:** The meeting will be held on Friday, October 03, 2014, from 10 a.m. until noon.

**ADDRESSES:** The meeting will be held via Webinar at this link: <http://mafmc.adobeconnect.com/mrip-qa/>. When the webinar begins, once attendees click/navigate to this link audio connection details are provided.

*Council address:* Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to brief the Council on ongoing MRIP efforts to improve recreational data collection and to provide a forum for Council Members to ask questions regarding MRIP. NMFS MRIP staff will be on the webinar to respond to questions. There will also be an opportunity for questions and comments from any public attendees. The meeting will be informational in nature.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 12, 2014.

**Tracey L. Thompson,**

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

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

RIN 0648–XD174

**Takes of Marine Mammals Incidental to Specified Activities; Seabird Monitoring and Research in Glacier Bay National Park, Alaska, 2014**

**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, we, NMFS, hereby give notification that the National Marine Fisheries Service has issued an Incidental Harassment Authorization (IHA) to Glacier Bay National Park (Glacier Bay NP), to take marine mammals, by Level B harassment, incidental to conducting seabird monitoring and research activities in Alaska, September 2014.

**DATES:** Effective September 1 through September 30, 2014.

**ADDRESSES:** The public may obtain an electronic copy of Glacier Bay NP's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act of 1969, are also available at the same site.

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

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

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for

review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals 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 subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such taking. 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.”

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 April 7, 2014, NMFS received an application from Glacier Bay NP requesting that we issue an Authorization for the take of marine mammals, incidental to conducting monitoring and research studies on glaucous-winged gulls (*Larus glaucescens*) within Glacier Bay National Park and Preserve in Alaska. NMFS determined the application complete and adequate on May 1, 2014.

Glacier Bay NP proposes to conduct ground-based and vessel-based surveys to collect data on the number and distribution of nesting gulls within five study sites in Glacier Bay, AK during September, 2014.

The proposed activities are within the vicinity of pinniped haulout sites and the following aspects of the proposed activities are likely to result in the take of marine mammals: noise generated by motorboat approaches and departures; noise generated by researchers while conducting ground surveys; and human presence during the monitoring and research activities. There are two species with confirmed occurrence in

the action area: harbor seals (*Phoca vitulina*) and Steller sea lions (*Eumetopia jubatus*). Of the two species, only harbor seals would most likely be harassed incidental to conducting the seabird monitoring and research activities due to the researchers avoiding any site with Steller sea lions present. Thus, by incorporation of this mitigation measure for Steller sea lions, we anticipate that take, by Level B harassment only, of individuals of harbor seals could result from the specified activity.

### Description of the Specified Activity

#### Overview

Glacier Bay NP proposes to identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites within the following study areas: Boulder, Lone, and Flapjack Islands, and Geikie Rock. Each of these study sites contains harbor seal haulout sites and Glacier Bay NP proposes to visit each site up to five times during the research season.

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

#### Dates and Duration

The Authorization would be effective from September 1, 2014 through September 30, 2014. Following is a brief summary of the activities.

Glacier Bay NP proposes to conduct a maximum of three ground-based surveys per each study site and a maximum of two vessel-based surveys per each study site.

#### Specified Geographic Region

The proposed study sites would occur in the vicinity of the following locations: Boulder (58°33'18.08" N; 136°1'13.36" W), Lone (58°43'17.67" N; 136°17'41.32" W), and Flapjack (58°35'10.19" N; 135°58'50.78" W) Islands, and Geikie Rock (58°41'39.75"

N; 136°18'39.06" W) in Glacier Bay, Alaska. Glacier Bay NP will also conduct studies at Tlingit Point Islet located at 58°45'16.86" N; 136°10'41.74" W; however, there are no reported pinniped haulout sites at that location.

#### Detailed Description of Activities

Glacier Bay NP proposes to conduct: (1) Ground-based surveys at a maximum frequency of three visits per site; and (2) vessel-based surveys at a maximum frequency of two visits per site.

**Ground-Based Surveys:** These surveys involve two trained observers visiting the largest gull colony on each island to: (1) Obtain information on the numbers of nests, their location, and contents (i.e., eggs or chicks); (2) determine the onset of laying, distribution, abundance, and predation of gull nests and eggs; and (3) record the proximity of other species relative to colony locations.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (4.6 miles per hour (mph)). Ground surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls. Glacier Bay NP will discontinue ground surveys after they detect the first hatchling to minimize disturbance to the gull colonies.

**Vessel-Based Surveys:** These surveys involve two trained observers observing and counting the number of adult and fledgling gulls from the deck of a motorized vessel which would transit around each island at a distance of approximately 328 ft (100 m) to avoid flushing the birds from the colonies. Vessel-based surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls.

#### Comments and Responses

We published a notice of receipt of Glacier Bay NP's application and proposed Authorization in the **Federal Register** on June 4, 2014 (79 FR 32226). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Glacier Bay NP carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (79 FR 32226, June 4, 2014) and the application. We have included all measures proposed in the notice of the proposed authorization (79 FR 32226, June 4, 2014) in the final Authorization.

We also received comments from one private citizen who opposed the authorization on the basis that NMFS should not allow any Authorizations for harassment. We considered the commenter's general opposition to Glacier Bay NP's activities and to our issuance of an Authorization. The Authorization, described in detail in the **Federal Register** notice of the proposed Authorization (79 FR 32226, June 4, 2014) includes mitigation and monitoring measures to effect the least practicable impact to marine mammals and their habitat. It is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements.

Regarding the commenter's opposition to authorizing harassment, the MMPA allows U.S. citizens (which includes Glacier Bay NP) to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout the **Federal Register** notice (79 FR 32226, June 4, 2014), we made the necessary preliminary findings under 16 U.S.C. 1371(a)(5)(D) to support issuance of Authorization.

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

The marine mammals most likely to be harassed incidental to conducting seabird monitoring and research are Pacific harbor seals. We do not anticipate harassment of Steller sea lions due to the researchers avoiding any site with Steller sea lions present.

We refer the reader to Allen and Angliss (2013) for general information on these species which we presented in the notice of proposed authorization (79 FR 32226, June 4, 2014). The 2013 NMFS Marine Mammal Stock Assessment Report is available at: [http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013\\_final.pdf](http://www.nmfs.noaa.gov/pr/sars/pdf/ak2013_final.pdf).

#### Other Marine Mammals in the Proposed Action Area

Northern sea otters (*Enhydra lutris kenyoni*) and polar bears (*Ursus maritimus*) listed as threatened under the Endangered Species Act could occur in the proposed area. The U.S. Fish and Wildlife Service manages these species

and we do not consider them further in this notice of issuance of an Authorization.

### Potential Effects of the Specified Activities on Marine Mammals

Acoustic and visual stimuli generated by: (1) Noise generated by kayak, motorboat, or dinghy approaches and departures; (2) human presence during seabird monitoring and research activities, have the potential to cause Pacific harbor seals hauled out on Boulder, Lone, and Flapjack Islands, and Geikie Rock to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed activities has the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of harbor seals.

We included a summary and discussion of the ways that the types of stressors associated with Glacier Bay NP's specified activities (i.e., visual and acoustic disturbance) have the potential to impact marine mammals in the notice of proposed authorization (79 FR 32226, June 4, 2014).

**Vessel Strike:** The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving kayaks or boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Glacier Bay NP's researchers will access areas at slow transit speeds in easily maneuverable kayaks or small boats negating any chance of an accidental strike.

**Rookeries:** No monitoring or research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

### Anticipated Effects on Marine Mammal Habitat

We considered these impacts in detail in the notice for the proposed authorization (79 FR 32226, June 4, 2014). Briefly, we do not anticipate that the proposed research activities would result in any significant or long-term effects on the habitats used by the marine mammals in the proposed area,

including the food sources they use (i.e., fish and invertebrates). While we anticipate that the specified activity could potentially result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible. We do not consider behavioral modification to cause significant or long-term consequences for individual marine mammals or their populations.

### Mitigation

In order to issue an incidental take authorization 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 adverse 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).

The Glacier Bay NP has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Recommended best practices in Womble *et al.* (2013); Richardson *et al.* (1995); Pierson *et al.* (1998); and Weir and Dolman, (2007).

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

- Perform pre-survey monitoring before deciding to access a study site;
- Avoid accessing a site based on a pre-determined threshold of animals present; sites used by pinnipeds for pupping; or sites used by Steller sea lions;
- Perform controlled and slow ingress to the study site to prevent a stampede and select a pathway of approach to minimize the number of marine mammals harassed;
- Monitor for offshore predators. Avoid approaching the study site if killer whales (*Orcinus orca*) are present. If Glacier Bay and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.
- Maintain a quiet research atmosphere in the visual presence of pinnipeds.

**Pre-Survey Monitoring:** Prior to deciding to land onshore to conduct the study, the researchers would use high-powered image stabilizing binoculars

from the watercraft to document the number, species, and location of hauled out marine mammals at each island. The vessels would maintain a distance of 328 to 1,640 ft (100 to 500 m) from the shoreline to allow the researchers to conduct pre-survey monitoring.

**Site Avoidance:** Researchers would decide whether or not to approach the island based on the species present, number of individuals, and the presence of pups. If there are high numbers (greater than 25) of hauled out harbor seals and/or young pups or there are any Steller sea lions present, the researchers will not approach the island and will not conduct gull monitoring research.

**Controlled Landings:** The researchers would determine whether to approach the island based on the number and type of animals present. If the island has fewer than 25 individuals without pups, he/she would approach the island by motorboat at a speed of approximately 2 to 3 knots (2.3 to 3.4 mph). This would provide enough time for any marine mammals present to slowly enter the water without panic or stampede. The researchers would also select a pathway of approach farthest from the hauled out harbor seals to minimize disturbance.

**Minimize Predator Interactions:** If marine predators (i.e. killer whales) are present in the vicinity of hauled out marine mammals, the researchers would not approach the study site.

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

### Mitigation Conclusions

NMFS has carefully evaluated Glacier Bay NP's proposed mitigation measures in the context of ensuring that we prescribe 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.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of

accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to kayak, motorboat, or dinghy operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals exposed to kayak, motorboat, or dinghy operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to kayak, motorboat, or dinghy operations or visual presence that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

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

#### Monitoring

In order to issue an ITA 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 we expect to be present in the proposed action area.

Glacier Bay NP submitted a marine mammal monitoring plan in section 13 of their Authorization application. NMFS or the Glacier Bay NP has not modified or supplemented the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals in order to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals would be affected by the research activities and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;

3. An increase in our understanding of how marine mammals respond to acoustic and visual stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

As part of its Authorization application, Glacier Bay NP proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that

require real-time monitoring, and to satisfy the monitoring requirements of the Authorization.

The Glacier Bay NP researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates and location of the researcher's activities and the number and type of species present. The researchers would document the behavioral state of animals present, and any apparent disturbance reactions or lack thereof.

#### Reporting

Glacier Bay NP will submit a final monitoring report to us no later than 90 days after the expiration of the Incidental Harassment Authorization, if we issue it. The final report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The final report will provide:

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

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

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

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

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (e.g., vessel-strike, stampede, etc.), Glacier Bay NP shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to [Jolie.Harrison@noaa.gov](mailto:Jolie.Harrison@noaa.gov) and [ITP.Cody@noaa.gov](mailto:ITP.Cody@noaa.gov) and the Alaska Regional Stranding Coordinator at (907) 586-7248 ([Aleria.Jensen@noaa.gov](mailto:Aleria.Jensen@noaa.gov)). The report must include the following information:

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

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

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead researcher determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), Glacier Bay NP will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to [Jolie.Harrison@noaa.gov](mailto:Jolie.Harrison@noaa.gov) and [ITP.Cody@noaa.gov](mailto:ITP.Cody@noaa.gov) and the Alaska Regional Stranding Coordinator at (907) 586-7248 ([Aleria.Jensen@noaa.gov](mailto:Aleria.Jensen@noaa.gov)). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with Glacier Bay NP to determine whether modifications in the activities are appropriate. Activities may continue while we review the circumstances of the incident.

In the event that Glacier Bay NP discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Glacier Bay will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to [Jolie.Harrison@noaa.gov](mailto:Jolie.Harrison@noaa.gov) and [ITP.Cody@noaa.gov](mailto:ITP.Cody@noaa.gov) and the Alaska Regional

Stranding Coordinator at (907) 586-7248 ([Aleria.Jensen@noaa.gov](mailto:Aleria.Jensen@noaa.gov)) within 24 hours of the discovery. Glacier Bay NP researchers will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. Glacier Bay NP can continue their research activities. Activities may continue while we review the circumstances of the incident.

#### 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].

Acoustic (i.e., increased sound) and visual stimuli from the proposed research activities may have the potential to result in the behavioral disturbance of some marine mammals. Thus, NMFS proposes to authorize take by Level B harassment only for the proposed seabird monitoring and research activities on Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska.

Based on pinniped survey counts conducted by Glacier Bay NP (e.g., Mathews & Pendleton, 2006; Womble *et al.*, 2010), NMFS estimates that the research activities could potentially affect by Level B behavioral harassment 400 harbor seals over the course of the Authorization (Table 3). This estimate represents 12.6 percent of the Glacier Bay/Icy Strait stock of harbor seals and accounts for a maximum disturbance of 20 harbor seals each per visit at Boulder, Lone, and Flapjack Islands, and Geikie Rock, Alaska over a maximum level of five visits.

There is no evidence that Glacier Bay NP’s planned activities could result in injury, serious injury, or mortality within the action area. Moreover, the required mitigation and monitoring measures would minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not propose to authorize any injury, serious injury, or mortality. We expect all potential takes to fall under the category of Level B harassment only.

#### Encouraging and Coordinating Research

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

#### Analysis and Determinations

##### *Negligible Impact*

Negligible impact’ is “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). The lack of likely adverse effects on annual rates of recruitment or survival (i.e., population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of Level B harassment 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 behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, and the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, Glacier Bay NP's specified activities are not likely to cause long-term behavioral disturbance, permanent threshold shift, or other non-auditory injury, serious injury, or death. These reasons include:

1. The effects of the research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

2. The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Anecdotal reports from previous Glacier Bay NP activities have shown that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities.

3. The low potential for large-scale movements leading to injury, serious injury, or mortality because the researchers would delay ingress into the landing areas only after the pinnipeds have slowly entered the water.

4. Glacier Bay NP limiting access to Boulder, Lone, and Flapjack Islands, and Geikie Rock if more than 25 animals are present or if Steller sea lions are present in the research areas.

NMFS does not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Glacier Bay's proposed activities, and NMFS does not propose to authorize injury, serious injury, or mortality at this time.

Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see "Potential Effects on Marine Mammals" section in the notice of proposed authorization (79 FR 32226, June 4, 2014), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock. In addition, the research activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

NMFS finds that Glacier Bay NP's proposed activities will have a negligible impact on the affected species or stocks based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures.

*Small Numbers*

As mentioned previously, NMFS estimates that Glacier Bay NP's activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. For harbor seals, this estimate is small (12.6 percent) relative to the population size.

#### *Small Numbers*

Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Glacier Bay NP's proposed activities would take small numbers of marine mammals relative to the populations of the affected species or stocks.

**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. Glacier Bay National Park prohibits subsistence harvest of harbor seals within the Park (Catton, 1995).

#### **Endangered Species Act (ESA)**

NMFS does not expect that Glacier Bay NP's proposed research activities would affect any species listed under the ESA. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

#### **National Environmental Policy Act (NEPA)**

To meet our NEPA requirements for the issuance of an Authorization to Glacier Bay NP, we prepared an Environmental Assessment (EA) titled, "Environmental Assessment for the Issuance of an Incidental Harassment Authorization To Take Marine Mammals by Harassment Incidental to Conducting Seabird Research in Glacier Bay Alaska." We provided relevant environmental information to the public through a previous notice for the proposed Authorization (79 FR 32226, June 4, 2014) and considered public comments received in response prior to finalizing our EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI).

#### **Endangered Species Act (ESA)**

We conclude that issuance of an Incidental Harassment Authorization would not significantly affect the quality of the human environment and

have issued a FONSI. Our EA and FONSI for this activity are available upon request (see **ADDRESSES**).

#### **Authorization**

As a result of these determinations, we have issued an Incidental Harassment Authorization to Glacier Bay National Park for conducting seabird research September 1 through September 30, 2014, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: September 15, 2014.

**Perry F. Gayaldo,**

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

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**BILLING CODE 3510-22-P**

## **DEPARTMENT OF COMMERCE**

### **United States Patent and Trademark Office**

[Docket No. PTO-P-2014-0046]

#### **Notice on Roundtable on International Harmonization of Substantive Patent Law**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of roundtable.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is seeking input on certain matters relating to the international harmonization of substantive patent law. In view of the importance of harmonization of substantive patent law to the successful reutilization of the examination work of one intellectual property office by another, or work sharing, the USPTO is particularly interested in stakeholder comments on the following key patent examination-related issues: The definition and scope of prior art; the grace period; and standards for assessing novelty and obviousness/inventive step. To assist in gathering this information, the USPTO is holding a public roundtable which interested members of the public are invited to attend.

**DATES:** The roundtable will be held on November 19, 2014. The roundtable will begin at 8:30 a.m. and end at 12:00 p.m.

**ADDRESSES:** The roundtable will be held at the United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the roundtable, please contact Summer