DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 210830–0172]

RIN 0648–BJ87

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the St. George Reef Lighthouse Preservation Society (Society) for authorization to take marine mammals over the course of 5 years (2021–2026) incidental to conducting aircraft operations, lighthouse renovation, light maintenance activities, and tour operations on the St. George Reef Lighthouse Station (Station) on Northwest Seal Rock (NWSR). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notification of our decision.

DATES: Comments and information must be received no later than October 8, 2021.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0079 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., 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:

Availability

A copy of the Society's application and any 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 (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Society conducting aircraft operations, lighthouse renovation, light maintenance activities, and tour operations on the Station on NWSR approximately 8 miles (12.9 km) northwest of Crescent City, CA.

We received an application from the Society requesting 5-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to acoustic and visual disturbance of pinnipeds during helicopter operations, lighthouse repair, and tour operations. Please see Background section below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs 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 for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing 5-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding the Society's activities. These measures include:

- Required implementation of mitigation to minimize impact to pinnipeds and avoid disruption to dependent pups including several measures to approach haulouts cautiously to minimize disturbance, especially when pups are present.
- Required monitoring of the project areas to detect the presence of marine mammals before initiating work.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) 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, regulations are issued, and notice is provided to the public.

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 the 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 the takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

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

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

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of a proposed rule and subsequent LOAs) 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 preliminarily determined that the issuance of the proposed rule qualifies to be categorically excluded from further NEPA review.

Information in the Society's application and this notification collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the request.

Summary of Request

On March 23, 2020, NMFS received a request from the Society for a proposed rule and LOAs to take marine mammals incidental to lighthouse maintenance and preservation activities at NWSR, offshore of Crescent City, CA. The application was deemed adequate and complete on April 16, 2020. The Society's request is for take of a small number of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*), and northern fur seals (*Callorhinus ursinus*) by Level B harassment only. Neither the Society nor NMFS expects serious injury or mortality to result from this activity. On June 9, 2020 (85 FR 35268), we published a notice of receipt of the Coast Guard's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received no comments.

NMFS previously issued nine 1-year Incidental Harassment Authorizations (IHAs) for similar work (75 FR 4774, January 29, 2010; 76 FR 10564, February 25, 2011; 77 FR 8811, February 15, 2012; 78 FR 71576, November 29, 2013; 79 FR 6179, February 3, 2014; 81 FR 9440, February 25, 2016; 82 FR 11005, February 17, 2017; 83 FR 19254, May 2, 2018; and 84 FR 15598, April 16, 2019). Generally speaking, the Society complied with the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs. However, misunderstandings in past implementation have resulted in missing or incorrectly recorded monitoring data, which necessitates more frequent reporting in the first year (at least) of this rule to ensure appropriate monitoring and reporting implementation in the future. Information regarding their monitoring results may be found in the Potential Effects of Specified Activities on Marine Mammals and their Habitat and Estimated Take sections.

Description of Proposed Activity

Overview

The St. George Reef Lighthouse Station was built on NWSR in 1892 and is listed in the National Register of Historic Places. Covering much of the islet's surface, the structure consists of a 14.5 meter (m) high (48 foot (ft)) oval-shaped concrete base (the caisson) that holds much of the equipment and infrastructure for the lighthouse tower, which sits on the top of one end of the base. The square tower consists of hundreds of granite blocks topped with a cast iron lantern room reaching 45.7 m (150 ft) above sea level. An observation gallery platform surrounds the lantern room and provides a 360 degree view to the caisson and rocks below.

The purpose of the project is to conduct annual maintenance of the Station's optical light system, emergency maintenance in the event of equipment failure, restoration activities, and lighthouse tours. Because NWSR has no safe landing area for boats, the Society accesses the Station via helicopter. Restoration work sessions can occur over 3-day weekends or longer one to two week sessions. The following specific aspects of the proposed activities would likely result in the take of marine mammals: Acoustic and visual stimuli from (1) helicopter landings and takeoffs; (2) noise generated during restoration activities (*e.g.,* painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system); and (4) human presence. Thus, NMFS anticipates these activities may occasionally cause behavioral disturbance (*i.e.,* Level B harassment) of four pinniped species. It is expected that the disturbance to pinnipeds from the activities will be minimal and will be limited to Level B harassment.

The regulations proposed here (and any issued LOAs) would replace annual IHAs, providing a reduction in the time and effort necessary to obtain individual incidental take authorizations.

Dates and Duration

The Society proposes to conduct the activities (aircraft operations, lighthouse restoration and maintenance activities, and public tours) with a maximum of 70 helicopter flight days per year. The Society's deed restricts normal access from June 1 through October 15 annually, so currently proposed trips under this application would occur from October 16 through May 31. However, the Society is attempting to have the deed revised to allow visits at any time of the year. Therefore we will consider the implications of possible visits during any month of the year in our analyses below and we could issue LOAs to cover this time of year should the society be successful in revising their deed. The proposed regulations would be valid for a period of 5 years (January 1, 2022–December 31, 2026). Over the course of this 5-year authorization, the Society proposes a maximum of 350 days of activities.

Specific Geographic Region

The Station is located on NWSR (Figure 1), a small, rocky islet (41°50′24″ N, 124°22′06″ W), approximately 9

kilometers (km) (6.0 miles (mi)) offshore of Crescent City, California (41°46′48″ N; 124°14′11″ W). NWSR is approximately 91.4 meters (m) (300 feet (ft)) in diameter and peaks at 5.18 m (17 ft) above mean sea level.

Detailed Description of Specific Activity

Lighthouse Restoration Activities

Restoration and maintenance activities would involve the removal and restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, upgrading the present electrical system; and annual or biannual light beacon maintenance. The Society proposes to transport no more than 12 work crew members (requiring up to four round-trip flights) and equipment to NWSR for each restoration work session. Traditional work sessions in the past have been over 3-day long weekends. The Society now proposes to add occasional longer one to two week work sessions to address additional restoration needs.

Public Tours

The Society began conducting public tours to the lighthouse by helicopter in 1998 in conjunction with restoration activities and proposes to conduct public tours at the Station on one day of a traditional 3-day work session and on one to two weekend days of the longer work trips. The maximum number of expected tourists is 36 people per tour day.

Light Maintenance

As required by the United States Coast Guard, in order to maintain St. George Reef Lighthouse as a Private Aid to Navigation, the Society needs to conduct maintenance of the light. Normally this would occur in conjunction with a longer restoration work session. However, if the beacon light fails, the Society proposes to send a crew of two to three people to the Station by helicopter as soon as possible to repair the beacon light. Each repair event requires a 1-day trip to the Station.

The Society's deed currently limits visits between June 1 and October 15 of each year, but does permit limited emergency light repair trips to the station during that time. Should the Society be successful in eliminating the deed restriction on visitation dates, no light maintenance trips would be considered ''emergency''.

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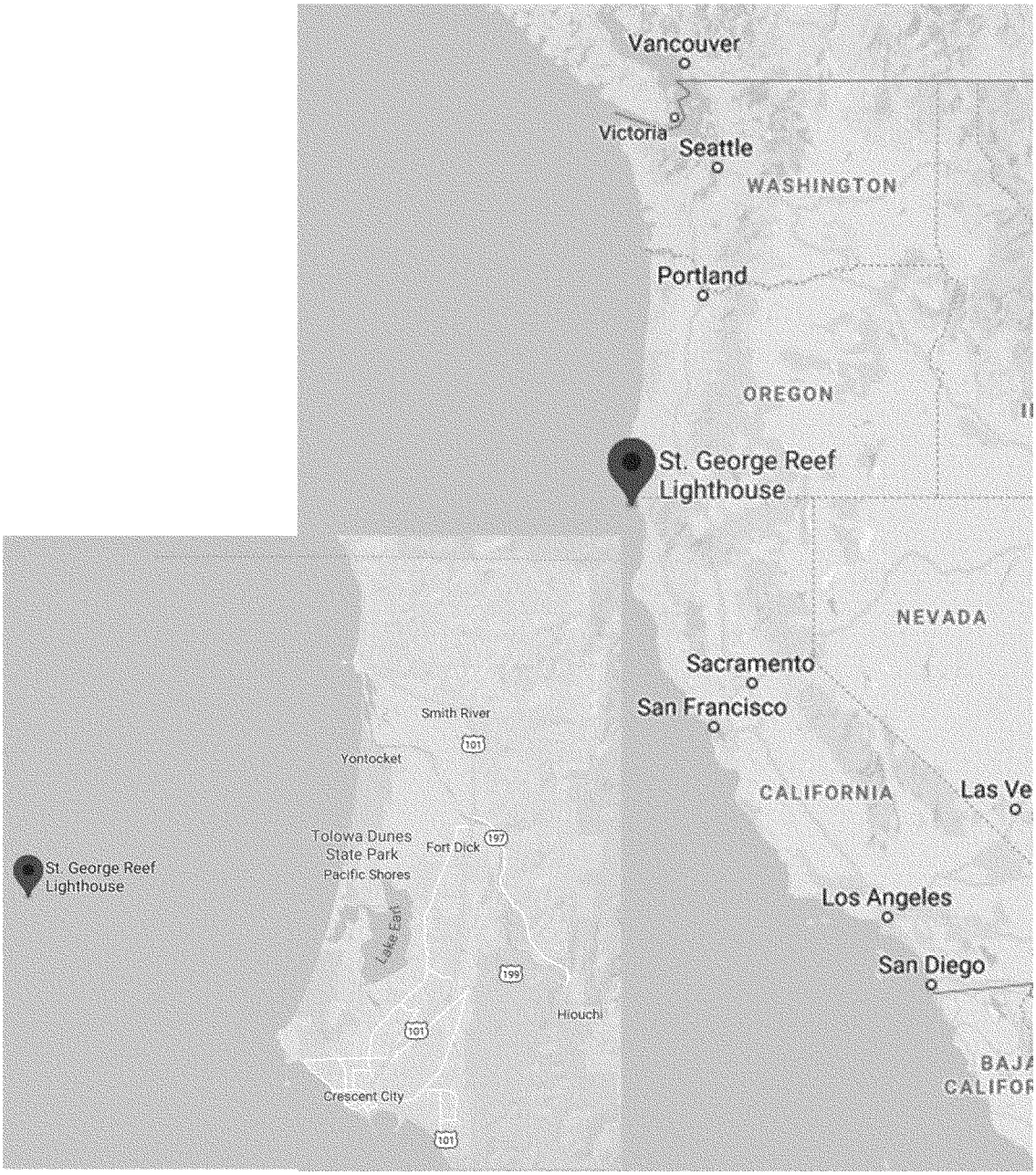
Figure 1. Location of the St. George Reef Lighthouse



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Aircraft Operations

Because NWSR has no safe landing area for boats, the proposed restoration, maintenance, and touring activities require the Society to transport work personnel, equipment, and tourists from the California mainland to NWSR by small helicopter. Helicopter landings take place adjacent to the tower on top of the oval base caisson. The landing area is small, so only small helicopters can be accommodated. The helicopter seats four passengers and one pilot and can also carry cargo in a net below the helicopter.

The number of flights per day varies by activity (restoration, tours, or light maintenance). We count each arrival and departure flight separately. For traditional 3-day restoration work sessions the 12 work crew members are transported to the Station on the morning of the first day (typically a Friday). The first flight would depart from Crescent City Airport no earlier than 8:30 a.m. for a 6-minute flight to Northwest Seal Rock. The helicopter would land and take-off immediately after offloading personnel and equipment every 20 minutes. To transport all 12 people and gear requires 4 departures and 4 arrivals on the first day for a total of 8 flights. The total duration of the first day's aerial operations would last for approximately 4 hours (hrs) and would end at approximately 12:30 p.m. Crew members would remain overnight at the Station and would not return to the mainland until the third day.

For the second day, the Society may conduct a maximum of four flights (two arrivals and two departures) to transport additional materials, if needed. The total duration of the second day's aerial

operations could last up to 3 hrs. Second-day operations are only conducted if needed; flights on the second day do not always occur.

For the final day of operations, the Society could conduct a maximum of eight flights (four arrivals and four departures) to transport the crew members and equipment/material back to the Crescent City Airport. The total duration of the third day's helicopter operations could last up to 2 hrs. Thus the total number of flights for restoration work on a 3 day trip is 20 (*i.e.,* 8 Friday, 4 Saturday, 8 Sunday). The Society proposes no more than 14 3-day work sessions per year.

The number of flights and days of flights on a one to two week restoration trip would be similar to a 3 day trip. That is eight flights on the first and last days of the trip plus four flights potentially on 1 day in the middle of the trip as needed. The Society is proposing no more than eight long trips per year. To date no more than three trips per year have ever been conducted. The Society would have no more than two restoration work trips per month.

On a 3-day restoration trip tours may occur on the last day. The tours would be scheduled on a weekend day on the beginning and or the end of the work party for the one to two week duration restoration trips. Additional flights would be conducted solely for the transport of tourists to and from the Lighthouse; those flights would be conducted in the later hours of the morning and early afternoon. The maximum number of expected tourists is 36 people per tour day. Thus the number of helicopter flights needed for tourists is 18 (9 arrivals and 9 departures). It is expected that each flight would land every 15–20 minutes. The scheduled duration of each visit is one hour per tour group (each tour group is one helicopter load of people). The last tour group would leave the island before 2 p.m. The total number of helicopter flights on a tour day is thus no more than 26 (18 for tourists, 8 for work crew members).

Light maintenance is expected to take no longer than 3 hours and one crew of two-three people. Only one-two helicopter landings at the Lighthouse are anticipated to ferry the crew an equipment to service the light. Thus a light maintenance trip requires a maximum of four flights on one day.

Most if not all of the disturbance from the Society's activity occurs on the flight days. When helicopters are not at the Station work crews remain inside or on the platform far above the marine mammals on the rocks below. Thus the number of flight days represents the general extent of the disturbance from these activities. The society proposes no more than 70 days of flight operations per year (4 for regular or emergency light maintenance trips and 66 for work restoration trips (with additional flights, but not days of flight activity on no more than 30 tour days).

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

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (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 or stocks for which take is expected and proposed to be authorized for this action, 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 (2020). 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. Pacific Marine Mammal SARs (*e.g.,* Carretta *et al.* 2020). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 SARs (Carretta *et al.* 2020) and draft 2020 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Northern fur seal	*Callorhinus ursinus*	California Breeding	-, D, N	14,050 (N/A, 7,524, 2013).	451	1.8
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	-, -, N	43,201 a (see SAR, 43,201, 2017).	2,592	113
Family Phocidae (earless seals)						

TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR—Continued

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]
Pacific harbor seal	*Phoca vitulina richardii*	California	-, -, N	30,968 (N/A, 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: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*, CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[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 Mortality/Serious Injury (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.

As indicated above, all four species (with four managed stocks) in Table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. All species that could potentially occur in the proposed survey areas are included in Table 1.

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Heath and Perrin 2008, Lowry and Forney 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008). Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin and DeLong, 2000; Melin *et al.,* 2008). In warm water years (El Niño), some females range as far north as Washington and Oregon, presumably following prey. The current maximum population growth rate for California sea lions is 12 percent (Carretta *et al.,* 2019).

Crescent Coastal Research (CCR) conducted a 3-year survey of the wildlife species on NWSR for the Society. They reported that counts of California sea lions on NWSR varied greatly (from 6 to 541) during the observation period from April 1997 through July 2000. CCR reported that counts for California sea lions during the spring (April–May), summer (June–August), and fall (September–October), averaged 60, 154, and 235, respectively (CCR 2001). NMFS Southwest Fisheries Science Center (SWFSC) conducted 14 annual marine mammal surveys over 19 years (1998 to 2017) at St. George Reef. California sea lions were last documented at NWSR in July of 2003 (11) (unpublished data, Beth Jaime, NMFS SWFSC, pers. comm., 2020).

Northern Fur Seal

Northern fur seals occur from southern California north to the Bering Sea and west to the Sea of Okhotsk and Honshu Island of Japan. NMFS recognizes two separate stocks of northern fur seals within U.S. waters: An Eastern Pacific stock distributed among sites in Alaska, British Columbia, and islets along the west coast of U.S. waters (*i.e.,* St. Paul, St. George, and Bogoslof); and a California stock (including San Miguel Island and the Farallon Islands) (Muto *et al.,* 2018).

Northern fur seals breed in Alaska and migrate along the west coast during fall and winter. Due to their pelagic habitat, they are rarely seen from shore in the continental United States, but individuals occasionally come ashore on islands well offshore (*i.e.,* Farallon Islands and Channel Islands in California). During the breeding season, approximately 45 percent of the worldwide population inhabits the Pribilof Islands in the Southern Bering Sea, with the remaining animals spread throughout the North Pacific Ocean (Caretta *et al.,* 2015).

Northern fur seals have not been observed during the NMFS SWFSC's marine mammal surveys of St. George Reef from 1998 to 2017 (Beth Jaime, NMFS, pers. comm., 2020). However, CCR observed one male northern fur seal on Northwest Seal Rock in October, 1998 (CCR 2001). It is possible that a few animals may use the island more often than indicated by the surveys, if they were mistaken for other otariid species (*i.e.,* eared seals or fur seals and sea lions) (M. DeAngelis, NMFS, pers. comm., 2007).

Steller Sea Lions

Steller sea lions range extends from the North Pacific Rim from northern Japan to California with areas of abundance in the Gulf of Alaska and Aleutian Islands (Muto *et al.,* 2019). Steller sea lions consist of two distinct stocks: The western and eastern stocks divided at 144° West longitude (Cape Suckling, Alaska). The western stock of Steller sea lions inhabit central and western Gulf of Alaska, Aleutian Islands, as well as coastal waters and breed in Asia (*e.g.,* Japan and Russia). The eastern stock includes sea lions living in southeast Alaska, British Columbia, California, Oregon, and Washington and is the only one in the project area. The stock was delisted under the ESA in 2013.

The species is not known to migrate, but individuals, especially juveniles and adult males, disperse widely outside of the breeding season (late May through early August), thus potentially intermixing eastern and western stocks (Muto *et al.,* 2018). Steller sea lions give birth in May through July and breeding commences a couple of weeks after birth. Pups are weaned during the winter and spring of the following year.

A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.,* 2007). Overall, counts of pups in California, Oregon, British Columbia, and Southeast Alaska, as well as counts of non-pups in the same regions plus Washington has increased steadily since the 1980s. Stock increase has been attributed to escalation of pup counts in all regions (NMFS 2013).

Steller sea lion numbers at NWSR ranged from 20 to 355 animals between 1997 and 2000 (CCR 2001). Counts of

Steller sea lions during the spring (April–May), summer (June–August), and fall (September–October), averaged 68, 110, and 56, respectively (CCR 2001). A multi-year survey at NWSR between 2000 and 2004 showed Steller sea lion numbers ranging from 175 to 354 in July (M. Lowry, NMFS/SWFSC, unpubl. data). The SWFSC surveys document a consistent presence of Steller sea lions at NWSR in 11 out of 14 of yearly surveys between 1998 and 2017 with an average of 240 individuals (Beth Jaime, NMFS, pers. comm., 2020). The largest presence of Steller sea lions at St. George Reef is found on Southwest Seal Rock, approximately 6 km (3.7 miles) from NWSR, with an average of 915 individuals observed among the SWFSC surveys (unpublished data, Beth Jaime, NMFS/SWFSC, pers. comm., 2020). Southwest Seal Rock is a rookery that has contained up to 450 pups (Wright *et al.* 2017). Adults with pups are known to relocate from there to NWSR in the fall. (CCR 2001). Winter use of NWSR by Steller sea lions is thought to be minimal, due to inundation of the natural portion of the island by large swells.

Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. *Phoca vitulina richardii* inhabits coastal and estuarine areas from Mexico to Alaska (Carretta *et al.,* 2020) and is the only stock present in the action area.

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Females nurse their pups for an average of 24 days and pups are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups. The nearest harbor seal rookery relative to the proposed project site is at Castle Rock National Wildlife Refuge, located approximately located 965 m (0.6 mi) south of Point St. George, and 2.4 km (1.5 mi) north of the Crescent City Harbor in Del Norte County, California (US Fish and Wildlife Service (USFWS) 2007).

CCR noted that harbor seal use of NWSR was minimal, with only one sighting of a group of six animals, during 20 observation surveys from 1997 through 2000 (CCR 2001). They hypothesized that harbor seals may avoid the islet because of its distance from shore, relatively steep topography, and full exposure to rough and frequently turbulent sea swells. The SWFSC surveys did not record harbor seals at NWSR (unpublished data, Beth Jaime, NMFS/SWFSC, pers. comm., 2020).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

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

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) restoration activities (*e.g.,* painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.,* bulb replacement and automation of the light system); and (4) human presence may have the potential to cause behavioral disturbance.

Noise

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this proposed rule. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is the ratio of a measured sound pressure and a reference level. The commonly used reference pressure is 1 μPa for under water, and the units for SPLs are dB re: 1 μPa. The commonly used reference pressure is 20 μPa for in air, and the units for SPLs are dB: 20 μPa.

SPL (in decibels (dB)) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square is the square root of the arithmetic average of the squared instantaneous pressure values. All references to SPL in this document refer to the rms unless otherwise noted. SPL does not take into account the duration of a sound.

Noise testing on the helicopter that has been used by the Society, a Robinson R66, as required for Federal Aviation Administration (FAA) approval, required an overflight at 150 m (492 ft) above ground level, 109 knots (202 km/hr) and a maximum gross weight of 1,225 kg (2,700 lbs). The noise level measured on the ground at this distance and speed was 84.5 dB re: 20 μPa (A-weighted). FAA testing also measured the sound levels on the ground for a typical helicopter takeoff and approach as 87.8 dB re: 20 μPa (A-weighted) (Robinson 2017). Based on this information, we expect that the received sound levels at the landing area on the Station's caisson would be between 84.5 and 87.8 dB re: 20 μPa (A-weighted). These sound levels are below the NMFS behavioral threshold for airborne pinniped disturbance (90 dB for harbor seals and 100dB for all other pinnipeds) (NMFS 2016).

There is a dearth of information on acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson, *et al.,* 1995) and to NMFS' knowledge, there has been no specific documentation of temporary threshold shift (TTS), let alone permanent threshold shift (PTS), in free-ranging pinnipeds exposed to helicopter operations during realistic field conditions (Baker *et al.,* 2012; Scheidat *et al.,* 2011).

The primary factor that may influence abrupt movements of animals is engine noise, specifically changes in engine noise. The physical presence of aircraft could also lead to non-auditory effects on marine mammals involving visual or other cues. Airborne sound from a low-flying helicopter or airplane may be heard by marine mammals while at the surface or underwater. Responses by mammals could include hasty dives or turns, change in course, or flushing and stampeding from a haulout site. There are few well documented studies of the impacts of aircraft overflight over pinniped haulout sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al.,* 2001). In 2008, NMFS issued an IHA to the USFWS for the take of small numbers of Steller sea lions and Pacific harbor seals, incidental to rodent eradication activities on an islet offshore of Rat Island, AK conducted by helicopter. The 15-minute aerial treatment consisted of the helicopter slowly approaching the islet at an elevation of over 1,000 ft (304.8 m); gradually decreasing altitude in slow circles; and applying the rodenticide in a single pass and returning to Rat Island.

The gradual and deliberate approach to the islet resulted in the sea lions present initially becoming aware of the helicopter and calmly moving into the water. Further, the USFWS reported that all responses fell well within the range of Level B harassment (*i.e.,* limited, short-term displacement resulting from aircraft noise due to helicopter overflights).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al.,* 1995). The Lowest Observed Adverse Effects Level (LOAEL) for aircraft elevation disturbance are rather variable for pinnipeds on land, ranging from just over 150 m (492 ft) to about 2,000 m (6,562 ft) (Efroymson *et al.,* 2001). Bowles and Stewart (1980) estimated an LOAEL of 305 m (1,000 ft) for helicopters (low and landing) affecting California sea lions and harbor seals observed on San Miguel Island, CA; animals responded to some degree by moving within the haulout and entering into the water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

It is possible that the initial helicopter approach to NWSR would cause a subset of the marine mammals hauled out to react. CCR found a range of from 0 to 40 percent of all pinnipeds present on the island were temporarily displaced (flushed) due to initial helicopter landings in 1998. Their data suggested that the majority of these animals returned to the island once helicopter activities ceased, over a period of minutes to 2 hours (CCR, 2001). Far fewer animals flushed into the water on subsequent takeoffs and landings, suggesting rapid habituation to helicopter landing and departure (CCR, 2001; Guy Towers, Society, pers. comm.). CCR's data also showed that the number of pinnipeds that flush is low when takeoffs and landings occur less than 30 minutes apart, which is the case for all of the flights by the Society. Observations from monitoring to date for this work confirms the above pattern of partial flushing at initial landing and increasing habituation thereafter.

Any noise associated with restoration and maintenance activities is likely to be from light construction (*e.g.,* sanding, hammering, or use of hand drills). The Society will confine all restoration activities to inside the existing structure, which would occur mostly on the upper levels of the Station. Pinnipeds hauled out on NWSR do not have access to the upper levels of the Station and sound levels are not likely to exceed the thresholds.

Human Presence

The appearance of Society personnel may have the potential to cause Level B harassment of marine mammals hauled out on NWSR. Disturbance includes a variety of effects, from subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the Society's restoration personnel (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout 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 two body lengths or longer, or if already moving, a change of direction of greater than 90 degrees in response to the disturbance, or pinnipeds that flush into the water, are behaviorally harassed, and thus considered incidentally taken by Level B harassment. NMFS uses a 3-point scale (Table 2) to determine which disturbance reactions constitute take under the MMPA. Levels two and three (movement and flush) are considered take, whereas level one (alert) is not. Animals that respond to the presence of the Society's personnel 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.

TABLE 2—DISTURBANCE SCALE OF PINNIPED RESPONSES TO IN-AIR SOURCES TO DETERMINE TAKE

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.

*Only Levels 2 and 3 are considered take, whereas Level 1 is not.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007; Weilgart 2007). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displace marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart, 2007). Nevertheless, this is not likely to occur during the proposed activities since rapid habituation or movement to nearby haulouts is expected to occur after a potential pinniped flush.

Disturbances resulting from human activity can impact short- and long-term pinniped haulout behavior (Renouf *et al.,* 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.,* 1984; Stewart, 1984; Suryan and

Harvey, 1999; and Kucey and Trites, 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.,* 1984; Calambokidis *et al.,* 1991; and Suryan and Harvey 1999) or lead Hawaiian monk seals (*Neomonachus schauinslandi*) to avoid beaches (Kenyon 1972). In one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon 1962).

In cases where vessels actively approached marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Acevedo, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Richter *et al.,* 2003), disruption of normal social behaviors (Lusseau 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004). In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.,* kayaks, canoes, motorboats and sailboats) on harbor seal haul out behavior in Metis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks, and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks and canoes which approach slowly, quietly, and low on the water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haul out behavior of harbor seals.

In 2004, Acevedo-Gutierrez and Johnson (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haulout sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the 7-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m), respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007).

Stampede

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are particularly injurious when: (1) Animals fall when entering the water at high-relief locations; (2) there is extended separation of mothers and pups; and (3) crushing of pups by large males occurs during a stampede. However, NMFS does not expect any of these scenarios to occur at NWSR as the proposed action occurs outside of the pupping/breeding season, no mother/pup pairs are expected to be at the Station, there are no cliffs on NWSR, and previous monitoring has not recorded stampeding events during prior authorizations. The haulout sites at NWSR consist of ridges with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled out adult animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area or increase injury potential. Moreover, the proposed area would not be crowded with large numbers of Steller sea lions, further eliminating the possibility of potentially injurious mass movements of animals attempting to vacate the haulout. Thus, in this case, NMFS considers the risk of injury, serious injury, or death to hauled out animals as extremely low.

Stress Responses

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b)

and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous projects in the area.

Auditory Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, aircraft, sonar) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Anticipated Effects on Marine Mammal Habitat

The only direct habitat modification associated with the proposed activity is the restoration of the existing light station structures. Indirect effects of the activities on nearby feeding or haulout habitat are not expected. Increased noise levels are not likely to affect acoustic habitat or adversely affect marine mammal prey in the vicinity of the project area because source levels are low, transient, well away from the water, and do not readily transmit into the water. The Society would remove all waste, discarded materials and equipment from the island after each visit. Thus, NMFS does not expect that the proposed activity would have any effects on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on NWSR.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this rulemaking, 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 would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to helicopter operations and lighthouse maintenance activities. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized. As discussed earlier, behavioral (Level B) harassment is limited to movement and flushing, defined by the disturbance scale of pinniped responses to in-air sources to determine take (Table 2). Furthermore, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The Society's monitoring efforts reported zero marine mammals present on NWSR, in 2010. Furthermore, operations were not conducted in the years 2013 through 2016; thus, monitoring was not conducted. No visits occurred in 2020. Visits have occurred in all other years since 2010.

Steller sea lions were first reported during restoration trips conducted in April (9) and November (350, with a maximum of 155/day) of 2011 (St. George Reef Lighthouse Preservation Society (SGRLPS) 2011). Zero observations of Steller sea lions were reported during the one 2012 restoration trip and three 2017 trips conducted

(SGRLPS 2012, 2018). Four trips were conducted in 2018 (February, March, April, and November); only the November session reported any individuals (three) on site (SGRLPS 2018). One restoration trip was conducted in November 2019 and had 22 Steller sea lions present (SGRLPS 2020). In the event of an emergency trip to the lighthouse for repairs in summer, or if deed restrictions are changed, more Steller sea lions may be present in June and July (up to 350–400 animals based on CCR (2001)).

The maximum number of California sea lions present per day (160) was observed during the November 2011 trip. The April and November 2011 trip maximums were 2 and 430 individuals, respectively (SGRLPS 2011). Zero California sea lions were reported during the March 2012 trip (SGRLPS 2012). In 2017, the Society reported 16 and zero California sea lions during March and April trips, and 16 during a November trip for a landing zone inspection (SGRLPS 2017). Observations for the 2018 season totaled 40 individuals among its four trips (SGRLPS 2018). Eighteen California sea lions were reported during the November 2019 trip with a maximum of 10 per day (SGRLPS 2020). Should deed restrictions be altered to allow access during summer months, numbers could be somewhat higher based on the data in CCR (2001).

Northern fur seals have not been observed during any of the Society's work from 2010 through 2019 (SGRLPS 2010; 2011; 2012; 2017; 2018; 2020).

The Society first reported 2 Pacific harbor seals on site during the March 2012 restoration trip (SGRLPS 2012). Zero harbor seals were reported during the 2017, 2018, or 2019 work seasons (SGRLPS 2017; 2018; 2020).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. The monitoring observations described above serve as the underpinnings of the take estimate calculation used to determine the actual number of marine mammals that may be subject to take. Take estimates for each species for which take would be authorized were based on the following equation:

Take estimate per species = maximum number of observations/day during prior monitoring * number of proposed operations days

Based on the Society's previous monitoring reports, the maximum number of observations per day for each species is: Steller sea lions 155, California sea lions 160, and Pacific harbor seals 2. No Northern fur seals have been seen in prior project monitoring but one was observed during the survey work for this project by CCR (2001), so we use one for these calculations.

As discussed above, The Society is proposing no more than 70 flight days per year. This is an optimistic estimate that far exceeds prior efforts, but given adequate funding there is the need for extensive restoration work to the Station so the Society requested consideration of the additional days of work in the take estimate. Therefore NMFS estimates that approximately 10,850 Steller sea lions (calculated by multiplying the maximum single-day count of Steller sea lions that could be present (155) by 70 days of activities), 11,200 California sea lions, 140 Pacific harbor seals, and 70 Northern fur seals could be potentially taken by Level B behavioral harassment annually over the course of this rulemaking (Table 3). NMFS bases these estimates of the numbers of marine mammals that might be affected on consideration of the number of marine mammals that could be on NWSR in a worst case scenario based on prior monitoring. Should deed restrictions be altered to allow access during summer months, numbers of California sea lions and Steller's sea lions could be somewhat higher during a couple of those months based on the data in CCR (2001). Given these increases are limited in duration, only a fraction of the potential flight days could occur in summer, and the conservative nature of the maximum daily counts relative to the average observed animal counts from prior monitoring discussed above, we believe the proposed take estimates are adequately precautionary.

TABLE 3—PROPOSED ANNUAL LEVEL B HARASSMENT TAKE CALCULATIONS AND PERCENTAGE OF EACH STOCK AFFECTED

Species	Maximum number per day	Days of proposed activity	Proposed take	Percent of stock
California sea lion	160	70	11,200	4.3
Steller sea lion	155	70	10,580	25.1
Pacific harbor seal	2	70	140	0.5
Northern fur seal	1	70	70	0.5

Proposed Mitigation

In order to promulgate regulations and issue LOAs under Section 101(a)(5)(A) 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 the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' 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 the 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 and impact on operations.

The mitigation strategies described below largely follow those required and successfully implemented under previous incidental take authorizations issued in association with this project.

The following mitigation measures are proposed:

- No more than six flight days (up to two work trips) per month;
- Avoid direct physical interaction with marine mammals during activity. If a marine mammal comes within 10 m of such activity, operations must cease until the animal leaves of its own accord;
- Conduct training between construction supervisors and crews and tourists and the marine mammal monitoring team and relevant Society staff prior to the start of all visits and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. Visitors to the Station will be instructed to avoid unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse;
- Halt loud outside activity upon observation on NWSR of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met;
- Keep the door to the lower platform closed and barricaded to all tourists and other personnel. The door will only be opened when necessary and at a time when no animals are present on the lower platform;
- Ensure that helicopter approach patterns to the NWSR shall be such that the timing and techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for marine mammals to haul out on NWSR. Avoid rapid and direct approaches by the helicopter to the station by approaching NWSR at a relatively high altitude (*e.g.,* 800–1,000 ft; 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from an area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind conditions or visibility) such helicopter approach and timing techniques cannot be achieved, the Society must abort the restoration and maintenance session for the day;
- Employ a protected species observer (PSO) and establish monitoring locations as described in the application and Section 5 of any LOA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all helicopter flights at least one PSO must be used; and
- Monitoring must take place for all take-offs and landings.

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

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

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

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

- Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following: PSOs must be independent and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training. PSOs resumes must be approved by NMFS prior to beginning any activity subject to these regulations.
- PSOs must record all observations of marine mammals as described in Section 5 of any LOA, regardless of distance from the activity. PSOs shall document any behavioral reactions in concert with distance from the activity.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- 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 in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); 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;
- The Society must establish the following monitoring locations. For the first flight of the day a PSO with high definition camera will be on the first flight to the station. During all other

takeoffs and landings a PSO will be stationed on the platform of the lantern room gallery or on the last departing helicopter;

- Aerial photo coverage of the island will be completed by an observer using a high definition camera. Photographs of all marine mammals hauled out on the island will be taken at an altitude greater than 300 meters. Photographs of marine mammals present at the last flight of the day will be taken from the helicopter or from the lantern room gallery platform just before the last flight; and
- The Society and/or its designees must forward the photographs to a biologist capable of discerning marine mammal species if one is not present on the trip. The Society must provide the data to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities. The Society must make available the original photographs to NMFS or to other marine mammal experts for inspection and further analysis.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of each activity period, or 60 days prior to a requested date of issuance of any future LOAs for projects at the same location, whichever comes first. For the first year of the activities, at least, the reports will be submitted quarterly; following submission of the first three quarterly reports, NMFS will evaluate whether it is appropriate to modify subsequent annual LOAs require annual reports, based on whether the information provided in the first three quarterly reports adequately complies with the requirement. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Activities occurring during each daily observation period.
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.
- Upon each flight, the following information will be reported: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of the nearest marine mammal observed relative to the activity for each flight; estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); animal's closest point of approach to activity; and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing) using pinniped disturbance scale (Table 2).
- Number of marine mammals detected, by species.
- Detailed information about any implementation of any mitigation triggered, a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the activities discover an injured or dead marine mammal, the LOA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Society must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA and regulations. The LOA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

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).

Activities associated with the restoration, light maintenance and tour projects, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) from in-air sounds and visual disturbance. Potential takes could occur if individual marine mammals are present nearby when activity is happening.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. For all species, no Level A harassment is anticipated given the nature of the activities, *i.e.,* much of the anticipated activity would involve noises below thresholds and visual disturbance from tens of meters away, and measures designed to minimize the possibility of injury. The potential for injury is small for pinnipeds, and is expected to be essentially eliminated through implementation of the planned mitigation measures.

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 alerts or movements away from the lighthouse structure. Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas.

Reporting from prior years of these activities has similarly reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations as noted above. Repeated exposures of individuals to relatively low levels of sound and visual disturbance outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, 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 would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound and visual disturbance produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

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 minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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

- No mortality is anticipated or authorized.
- No important habitat areas have been identified within the project area.
- For all species, NWSR is a very small and peripheral part of their range.
- Monitoring reports from prior activities at the site have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) 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. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance of all species (in fact, take of individuals is less than 10 percent of the abundance of all of the affected stocks except Steller sea lions, see Table 3). This is likely a conservative estimate because they assume all takes are of different individual animals which is likely not the case, especially within individual trips. Many individuals seen within a single multi-day trip are likely to be the same across consecutive days, but PSOs would count them as separate takes across days.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has 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.

Adaptive Management

The regulations governing the take of marine mammals incidental to Society lighthouse repair and tour operation activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the prior year(s) to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Society regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable. Additionally, monitoring or reporting measures may be modified if appropriate and, in this case, the rule specifies quarterly monitoring and reporting requirements for the first year, which may subsequently be modified to annual requirements, based on NMFS evaluation of the first three reports.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

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, in this case with the West Coast Regional Protected Resources Division Office.

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.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Society's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notification and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Society, a 501(c)(3) non-profit whose mission is to preserve the St. George Reef lighthouse, is the sole entity that would be subject to the requirements in these proposed regulations, and the Society is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: August 31, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart F to part 217 to read as follows:

Subpart F—Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

Sec.

Subpart F—Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

§ 217.50 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the St. George Reef Lighthouse Preservation Society (Society) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to lighthouse repair and tour operation activities.

(b) The taking of marine mammals by the Society may be authorized in a Letter of Authorization (LOA) only if it occurs within Pacific Ocean waters in the vicinity of Northwest Seal Rock near Crescent City, California.

§ 217.51 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 217.52 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.56, the Holder of the LOA (hereinafter ''Society'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.50(b) by Level B harassment associated with lighthouse repair and tour operation activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.53 Prohibitions.

Except for taking authorized by a LOA issued under §§ 216.106 of this chapter and 217.56, it shall be unlawful for any person to do any of the following in connection with the activities described in § 217.50 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 of this chapter and 217.56;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.54 Mitigation requirements.

When conducting the activities identified in § 217.50(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.56 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the Society, supervisory personnel, pilot, protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this LOA at all times that activities subject to this LOA are being conducted.

(2) The Society shall conduct training between supervisors and crews and the marine mammal monitoring team and relevant Society staff prior to the start of all trips and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. Visitors to the Station will be instructed to avoid

unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse.

(3) Avoid direct physical interaction with marine mammals during activity. If a marine mammal comes within 10 m of such activity, operations must cease until the animal leaves of its own accord.

(4) Loud outside activity must be halted upon observation on Northwest Seal Rock (NWSR) of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met.

(5) No more than two restoration trips, or 6 days of flight operations, are permitted per month.

(b) *Protocols.* (1) The door to the lower platform will remain closed and barricaded to all tourists and other personnel. The door will only be opened when necessary and at a time when no animals are present on the lower platform.

(2) The pilot will ensure that helicopter approach patterns to the NWSR shall be such that the timing and techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for marine mammals to haul out on NWSR. Avoid rapid and direct approaches by the helicopter to the station by approaching NWSR at a relatively high altitude (*e.g.,* 800–1,000 ft; 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from an area where the density of pinnipeds is the lowest. If for any safety reasons (*e.g.,* wind conditions or visibility) such helicopter approach and timing techniques cannot be achieved, the Society must abort the restoration and maintenance session for the day.

(3) Monitoring shall be conducted by a trained PSO, who shall have no other assigned tasks during monitoring periods. Trained PSOs shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement mitigation procedures when applicable. The Society shall adhere to the following additional PSO qualifications:

(i) Independent PSOs are required;

(ii) At least one PSO must have prior experience working as an observer;

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience; and

(iv) The Society shall submit PSO resumes for approval by NMFS prior to beginning any activity subject to these regulations.

(4) The PSO must monitor the project area to the maximum extent possible based on the required monitoring locations and environmental conditions. They must record all observations of marine mammals as described in Section 5 of any LOA, regardless of distance from the activity. Monitoring must take place for all take-offs and landings.

§ 217.55 Requirements for monitoring and reporting.

(a) PSOs shall document any behavioral reactions in concert with distance from any project activity.

(b) *Reporting*—(1) *Reporting frequency.* (i) The Society shall submit a quarterly summary report to NMFS not later than 90 days following the end of each work quarter; after the first three quarterly submissions, NMFS will evaluate whether it is appropriate to modify to annual reports, and modify future LOAs as appropriate to indicate annual reporting requirements if so. The Society shall provide a final report within 30 days following resolution of comments on each draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Dates and times (begin and end) of all marine mammal monitoring;

(B) Activities occurring during each daily observation period;

(C) PSO locations during marine mammal monitoring;

(D) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

(E) Upon each flight, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of each marine mammal observed relative to the activity for each flight; estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); animal's closest point of approach and estimated time spent within the harassment zone; and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(F) Number of marine mammals detected, by species; and

(G) Detailed information about any implementation of any mitigation triggered, a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

(2) The Society shall submit a comprehensive summary report to NMFS not later than 90 days following the conclusion of marine mammal monitoring efforts described in this subpart.

(c) *Reporting of injured or dead marine mammals.* (1) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the LOA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by activities specified at § 217.50, the Society must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of these regulations and LOAs. The LOA-holder must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(2) [Reserved]

§ 217.56 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the Society must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the

Society may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Society must apply for and obtain a modification of the LOA as described in § 217.207.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.57 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.206 for the activity identified in § 217.200(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.206 for the activity identified in § 217.200(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Society regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Society's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound or disturbance research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.206, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.58–217.59 [Reserved]

[FR Doc. 2021–19124 Filed 9–7–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BK68

Fisheries of the Northeastern United States; Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Announcement of availability of amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council has submitted Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan, incorporating the Environmental Assessment and the Regulatory Flexibility Analysis, for review by the Secretary of Commerce, and is requesting comments from the public. This action would allow for more controlled access to the scallop resource by the limited access and limited access general category fleets and increase monitoring to support a growing directed scallop fishery in Federal waters, including the Northern Gulf of Maine Management Area. These proposed management measures are intended to promote conservation of the scallop resource in the Northern Gulf of Maine Management Area and to manage total removals from the area by all fishery components. Amendment 21 would also expand flexibility in the limited access general category individual fishing quota fishery to reduce impacts of potential decreases in ex-vessel price and increases in operating costs.

DATES: Comments must be received on or before November 8, 2021.

ADDRESSES: The Council has prepared a draft Environmental Assessment (EA) for this action that describes the proposed measures in Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the Council, including the EA and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/amendment-21.*

You may submit comments, identified by NOAA–NMFS–2021–0065, by:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2021–0065 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public