• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, proposing to approve Delaware's base year inventory SIP for the 2015 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 3, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2022–00248 Filed 1–20–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 220113–0013]

RIN 0648–BK97

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities

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 Sonoma County Water Agency (SCWA) for authorization to take marine mammals incidental to Russian River estuary management activities in Sonoma County, California, over the course of five years (2022–2027). As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requests comments on the proposed regulations.

DATES: Comments and information must be received no later than February 22, 2022.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2021–0124 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: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of SCWA's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

We received an application from SCWA requesting 5-year regulations and authorization to take multiple species of marine mammals. 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 by Level B harassment of marine mammals incidental to SCWA's estuary management activities at the mouth of the Russian River in Sonoma County, CA. Please see ''Background'' 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 five 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 five-year regulations, and for any subsequent 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 SCWA's estuary management activities. These measures include:

- Measures to minimize the number and intensity of incidental takes during sensitive times of year and to minimize the duration of disturbances.
- Measures designed to eliminate startling reactions.
- Eliminating or altering management activities on the beach when pups are present, and by setting limits on the frequency and duration of events during pupping season.

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

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

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

Information in SCWA's application and this notice 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 notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On September 2, 2021, we received an adequate and complete request from SCWA for authorization to take marine mammals incidental to estuary management activities. SCWA provided a final version of the application incorporating minor corrections on September 22, 2021. On September 29, 2021 (86 FR 53950), we published a notice of receipt of SCWA's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received one supportive comment from a private citizen.

SCWA proposes to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of the barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). Artificial breaching and monitoring activities may occur at any time during the period of validity of the proposed regulations. The requested regulations would be valid for 5 years, from April 21, 2022, through April 20, 2027.

Breaching of the naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (*e.g.,* bulldozer, excavator) and increased human presence, and monitoring in the estuary requires the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and therefore anticipated to be taken incidental to the specified activity, include the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

This request for incidental take regulations (ITR) and a subsequent Letter of Authorization (LOA) follows issuance of previous 5-year ITR (2017–2022) (82 FR 13765; March 15, 2017). Prior to issuance of that initial ITR, NMFS issued seven consecutive incidental harassment authorizations (IHA) to SCWA for incidental take associated with the same ongoing activities, between 2010–2016.

Description of the Specified Activity

Overview

The proposed action involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. Requirements related to the ESA are described in further detail below. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of the barrier beach may be conducted for the sole purpose of reducing flood risk. SCWA's proposed activity was described in detail in our notice of proposed authorization prior to the 2011 IHA (76 FR 14924; March 18, 2011). SCWA's estuary management activities have not changed (aside from minor changes to SCWA's biological and physical estuary monitoring measures);

please see that document for a detailed description.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity for these proposed regulations (2022–2027), although construction and maintenance of a lagoon outlet channel would occur only during the lagoon management period. In addition, there are certain restrictions placed on SCWA during the harbor seal pupping season. These, as well as periodicity and frequency of the specified activities, are described in further detail below.

Specified Geographical Region

The estuary is located about 97 kilometers (km) (60 miles (mi)) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach (see Figure 2 of SCWA's application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel and McIver, 1994).

Detailed Description of Activities

Within the Russian River watershed, the U.S. Army Corps of Engineers (Corps), SCWA, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) operate and maintain Federal facilities and conduct activities in addition to the estuary management, including flood control, water diversion and storage, instream flow releases, hydroelectric power generation, channel maintenance, and fish hatchery production. The Corps, SCWA, and the District conducted these activities for many years before salmonid species in the Russian River were protected under the ESA. Upon determination that these actions were likely to affect ESA-listed salmonids, as well as designated critical habitat for these species, formal consultation under section 7 of the ESA was initiated. In 2008, NMFS issued a Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the Corps, SCWA, and the District in the Russian River watershed (NMFS, 2008). This BiOp found that the activities—including SCWA's estuary management activities—authorized by the Corps and undertaken by SCWA and the District, if continued in a manner similar to recent historic practices, were likely to jeopardize the continued existence of ESA-listed salmonids and were likely to adversely modify critical habitat.

If a project is found to jeopardize a species or adversely modify its critical habitat, NMFS must develop and recommend a non-jeopardizing Reasonable and Prudent Alternative (RPA) to the proposed project, in coordination with the federal action agency and any applicant. A component of the RPA described in the 2008 BiOp requires SCWA to collaborate with NMFS and modify their estuary water level management in order to reduce marine influence (*i.e.,* high salinity and tidal inflow) and promote a higher water surface elevation in the estuary in order to enhance the quality of rearing habitat for juvenile salmonids. A program of potential incremental steps prescribed to reach that goal includes adaptive management of the outlet channel. SCWA is also required to monitor the response of water quality, invertebrate production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system.

The analysis contained in the BiOp found that maintenance of lagoon conditions was necessary only for the lagoon management period. See NMFS' BiOp (2008) for details of that analysis. As a result of that determination, there are three components to SCWA's estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole goal of flood risk abatement; and (3) physical and biological monitoring. Monitoring is conducted to measure changes in the beach and channel elevation, lengths, and widths, as well as flow velocities and observations of the bed structure in the channel. SCWA is also required through the BiOp to collect biological, water quality, and physical habitat data in conjunction with estuary management. These monitoring activities include fisheries sampling, water quality monitoring, invertebrate sampling, and physical habitat measurements requiring the use of boats in the estuary. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for detailed discussion of lagoon outlet channel management, artificial breaching, and other monitoring activities. Please see Table 3 for more details regarding the specific activities.

NMFS' BiOp determined that salmonid estuarine habitat may be improved by managing the Russian River estuary as a perched, freshwater lagoon and, therefore, stipulates as an RPA to existing conditions that the estuary be managed to achieve such conditions between May 15th and October 15th. In recognition of the complexity and uncertainty inherent in attempting to manage conditions in a dynamic beach environment, the BiOp stipulates that the estuarine water surface elevation RPA be managed adaptively, meaning that it should be planned, implemented, and then iteratively refined based on experience gained from implementation.

The estuary closes throughout the year as a result of a sandbar forming at the mouth of the Russian River. To facilitate summer lagoon management, SCWA would construct the lagoon outlet channel after the first natural barrier beach closure, but the lagoon would generally be managed during the lagoon management period. It is anticipated that the outlet channel implementation would be a 2-day event with initial construction of the lagoon outlet channel taking one day of work, and subsequent adjustments to the outlet channel on the second day. Subsequent maintenance would occur approximately weekly until the end of the lagoon management period. Artificial breaching activities would generally occur at any time of year outside the lagoon management period. Biological and physical habitat monitoring can occur at any time of year, but generally occurs from mid-April through December, with the exception of topographic beach surveys that occur year round.

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the most common species inhabiting the haul-out at the mouth of the Russian River (Jenner haul-out) and fine-scale local abundance data for harbor seals have been recorded extensively since 1972. California sea lions and northern elephant seals have also been observed infrequently in the project area. In addition to the primary Jenner haul-out, there are eight peripheral haul-outs nearby (see Figure 1 of SCWA's application). These include North Jenner and Odin Cove to the north; Pocked Rock, Kabemali, and Rock Point to the south; and Penny Logs, Patty's Rock, and Chalanchawi upstream within the estuary.

This section provides summary information regarding local occurrence of these species. We have reviewed SCWA's detailed species descriptions, including life history information, for accuracy and completeness and refer the

reader to Sections 3 and 4 of SCWA's application instead of reprinting the information here. Please also see NMFS Stock Assessment Reports, which may be accessed online at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

Harbor Seals

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the Northern Hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (Carretta *et al.,* 2016). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks are recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington, (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2016). Placement of a stock boundary at the California-Oregon border is not based on biology but is considered a political and jurisdictional convenience (Carretta *et al.,* 2016). In addition, harbor seals may occur in Mexican waters, but these animals are not considered part of the California stock. Only the California stock is expected to be found in the project area.

California harbor seals are not protected under the ESA or listed as depleted under the MMPA, and are not considered a strategic stock under the MMPA because annual human-caused mortality (43) is significantly less than the calculated potential biological removal (PBR; 1,641) (Carretta *et al.,* 2016). The population appears to be stabilizing at what may be its carrying capacity and the fishery mortality is declining. The best abundance estimate of the California stock of harbor seals is 30,968 and the minimum population size of this stock is 27,348 individuals (Carretta *et al.,* 2016).

Harbor seal pupping normally occurs at the Russian River beginning in March and continuing into May, and pups are counted during surveys through June, after which time it becomes difficult to distinguish pups from sub-adult seals. The Jenner haul-out is the largest in Sonoma County. A substantial amount of monitoring effort has been conducted at the Jenner haul-out and surrounding areas. Concerned local residents formed the Stewards' Seal Watch Public Education Program in 1985 to educate beach visitors and monitor seal populations. State Parks Volunteer Docents continue this effort towards safeguarding local harbor seal habitat. On weekends during the pupping and molting season (approximately March–August), volunteers conduct public outreach and record the numbers of visitors and seals on the beach, other marine mammals observed, and the number of boats and kayaks present.

Ongoing monthly seal counts at the Jenner haul-out were begun by J. Mortenson in January 1987, with additional nearby haul-outs added to the counts thereafter. In addition, local resident E. Twohy began daily observations of seals and people at the Jenner haul-out in November 1989. These datasets note whether the mouth at the Jenner haul-out was opened or closed at each observation, as well as various other daily and annual patterns of haul-out usage (Mortenson and Twohy, 1994). In 2009, SCWA began regular baseline monitoring of the haul-out as a component of its estuary management activity.

The number of harbor seals at the Russian River varies throughout the year, with peak seal abundance typically during the summer molting period (Figure 4). Abundance of seals on the Jenner haul-out declines in the fall after the molting season is complete, but seals are present at Jenner and locally year round. The number of harbor seals at this haul-out has fluctuated from year to year. See Figures 4 and 5 in SCWA's application for additional detail.

The number of seals present at the Jenner haul-out generally declines during bar-closed conditions (Mortenson, 1996). SCWA's pinniped monitoring efforts from 1996 to 2000 focused on artificial breaching activities and their effects on the Jenner haul-out. Seal counts and disturbances were recorded from one to two days prior to breaching, the day of breaching, and the day after breaching (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). In each year, the trend observed was that harbor seal numbers generally declined during a beach closure and increased the day following an artificial breaching event. Heckel and McIver (1994) speculated that the loss of easy access to the haul-out and ready escape to the sea during bar-closed conditions may account for the lower numbers. SCWA's pinniped monitoring program since 2009 has included observations from water level management activities (*i.e.,* artificial breaching and lagoon outlet channel implementation) and its effects on the Jenner haul-out. Seal counts and disturbances were recorded from 1 to 2 days prior to a breaching or channel implementation event, the day of an event, and the day after an event. During most events the trend observed was that harbor seal numbers declined during a beach closure (occasionally, the numbers rose again and then declined again during a closure) and increased the day following an artificial breaching event. For more information, see SCWA's monitoring reports (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*).

Mortenson (1996) observed that pups were first seen at the Jenner haul-out in late March, with maximum counts in May. In this study, pups were not counted separately from other age classes at the haul-out after August due to the difficulty in discriminating pups from small yearlings. From 1989 to 1991, Hanson (1993) observed that pupping began at the Jenner haul-out in mid-April, with a maximum number of pups observed during the first two weeks of May. This corresponds with the peaks observed at Point Reyes, where the first viable pups are born in March and the peak is the last week of April to early May (SCWA, 2014). Based on this information, pupping season at the Jenner haul-out is conservatively defined here as March 15 to June 30.

California Sea Lions

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California and (5) Northern Gulf of California (Schramm *et al.,* 2009). Rookeries for the Pacific Temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found from the Gulf of Alaska to Mexican waters off Baja California. Animals belonging to other populations (*e.g.,* Pacific Subtropical) may range into U.S. waters during non-breeding periods. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (*i.e.,* the U.S. stock of California sea lions) (Carretta *et al.,* 2019). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific Temperate population (Lowry and Maravilla-Chavez, 2005).

California sea lions are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (≥321) is substantially less than the PBR (estimated at 14,011); therefore, California sea lions are not considered a strategic stock under the MMPA. The best abundance estimate of the U.S. stock of California sea lions is 257,606 and the minimum population size of this stock is 233,515 individuals (Carretta *et al.,* 2019).

Solitary California sea lions have occasionally been observed at or in the vicinity of the Russian River estuary (MSC, 1999, 2000), in all months of the year except June. Male California sea lions are occasionally observed hauled out at or near the Russian River mouth in most years, including 2016–2018 and 2020. Other individuals were observed in the surf at the mouth of the river or swimming inside the estuary. Juvenile sea lions have also been observed during monitoring of peripheral haul-outs. The occurrence of individual California sea lions in the action area may occur year-round, but is infrequent and sporadic.

Northern Elephant Seals

Northern elephant seals gather at breeding areas, located primarily on offshore islands of Baja California and California, from approximately December to March before dispersing for feeding. Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, while females feed at sea south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults then return to land between March and August to molt, with males returning later than females, before dispersing again to their respective feeding areas between molting and the winter breeding season. Populations of northern elephant seals in the U.S. and Mexico are derived from a few tens or hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.,* 1994). Given the recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population and is considered to be a separate stock.

Northern elephant seals are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (5.3) is substantially less than the PBR (estimated at 5,122); therefore, northern elephant seals are not considered a strategic stock under the MMPA. The best abundance estimate of the California breeding population of northern elephant seals is 187,386 and the minimum population size of this stock is 85,369 individuals (Carretta *et al.,* 2021).

Censuses of pinnipeds at the mouth of the Russian River have been taken at least semi-monthly since 1987. Elephant seals were noted from 1987–95, with one or two elephant seals typically counted during May censuses, and occasional records during the fall and winter (Mortenson and Follis, 1997). A single, tagged northern elephant seal sub-adult was present at the Jenner haul-out from 2002–07. This individual seal, which was observed harassing harbor seals also present at the haul-out, was generally present during molt and again from late December through March. In recent years individual sub-adult elephant seals have been observed on a few occasions hauled out at the Russian River in the late summer and early fall. The occurrence of individual northern elephant seals in the action area has generally been infrequent and sporadic.

Potential Effects of the Specified Activity 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 will include a quantitative analysis of the number of incidents of take expected to occur incidental to this activity. The Negligible Impact Analysis and Determination section will include an analysis of how this specific activity will impact marine mammals and will consider 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 from that on the affected marine mammal populations or stocks.

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. In addition, pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to disturb pinnipeds present on the beach or at peripheral haul-outs in the estuary. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically exhibit a continuum of responses, beginning with alert movements (*e.g.,* raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus.

In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups. However, based on a significant body of site-specific data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to maintenance activities but may also simply become alert or move across the beach away from equipment and crews. SCWA has observed that harbor seals are generally less likely to flush from the beach when the primary aggregation of seals is north of the breaching activity (please refer to Figure 2 of SCWA's application), meaning that personnel and equipment are not required to pass the seals.

California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010). In the event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach,

pups have been observed during the pupping season; therefore, we have evaluated the potential for injury, serious injury, or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during recent monitoring, but may be inferred based on signs indicating pupping (*e.g.,* blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past, and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding (which may lead to abandonment).

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see Proposed Mitigation for more details). Further, the continued, and increasingly heavy (see SCWA's monitoring reports), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Marine Mammal Habitat

The purposes of the estuary management activities are to improve summer rearing habitat for juvenile salmonids in the Russian River estuary and/or to minimize potential flood risk to properties adjacent to the estuary. These activities would result in temporary physical alteration of the Jenner haul-out, but are essential to conserving and recovering endangered salmonid species, as prescribed by the BiOp. These salmonids are themselves prey for pinnipeds. In addition, with barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, likely increases suitability and availability of habitat for pinnipeds. Biological and water quality monitoring would not physically alter pinniped habitat. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for a more detailed discussion of anticipated effects on habitat.

During SCWA's pinniped monitoring associated with artificial breaching activities from 1996 to 2000, the number of harbor seals hauled out declined when the barrier beach closed and then increased the day following an artificial breaching event (MSC, 1997, 1998, 1999, and 2000; SCWA and MSC, 2001). This response to barrier beach closure followed by artificial breaching has remained consistent in recent years and is anticipated to continue. However, it is possible that the number of pinnipeds using the haul-out could decline during the extended lagoon management period, when SCWA would seek to maintain a shallow outlet channel rather than the deeper channel associated with artificial breaching. Collection of baseline information during the lagoon management period is included in the monitoring requirements described later in this document. SCWA's previous monitoring indicates that the number of seals at the haul-out declines from August to October, so management of the lagoon outlet channel (and managing the sandbar as a summer lagoon) would have little effect on haul-out use during the latter portion of the lagoon management period. The early portion of the lagoon management period coincides with the pupping season. Past monitoring during this period, which represents some of the longest beach closures in the late spring and early summer months, shows that the number of pinnipeds at the haul-out tends to fluctuate, rather than showing the more straightforward declines and increases associated with closures and openings seen at other times of year (MSC, 1998). This may indicate that seal haul-out usage during the pupping season is less dependent on bar status. As such, the number of seals hauled out from May through July would be expected to fluctuate but is unlikely to respond dramatically to the absence of artificial breaching events. Regardless, any impacts to habitat resulting from SCWA's management of the estuary during the lagoon management period are not in relation to natural conditions but, rather, in relation to conditions resulting from SCWA's discontinued approach of artificial breaching during this period.

In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat. Therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmonid abundance, ultimately providing more food for seals present within the action area. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization, which will inform both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination.

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).

SCWA has requested, and NMFS proposes, authorization to take harbor seals, California sea lions, and northern

elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance only. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty's Rock, and Chalanchawi). Estimates of the number of harbor seals that may be harassed by the proposed management activities are based upon the number of potential take events associated with lagoon outlet channel and artificial breaching activities (Table 3) and the average number of harbor seals that are present at the Jenner haul-out during bar-closed conditions (Table 2). Table 3 details the total number of estimated takes for harbor seals.

Events associated with lagoon outlet channel management would occur only during the lagoon management period and are split into two categories: (1) Initial channel implementation, which would likely occur between May and September; and (2) maintenance and monitoring of the outlet channel, which would continue until October 15. In addition, it is possible that the initial outlet channel could close through natural processes, requiring additional channel implementation events. Based on past experience, SCWA estimates that a maximum of three outlet channel implementation events could be required, with each event lasting up to two days. Outlet channel implementation events would only occur when the bar is closed. Therefore, it is appropriate to use data from bar-closed monitoring events in estimating take (Table 2). Construction of the outlet channel is designed to produce a perched outflow, resulting in conditions that more closely resemble bar-closed than bar-open with regard to pinniped haul-out usage. As such, bar-closed data is appropriate for estimating take during all lagoon management period maintenance and monitoring activity. As dates of outlet channel implementation cannot be known in advance, the highest daily average of seals per month during the lagoon management period—the May average for 2010–20—is used in estimating take. For maintenance and monitoring activities associated with the lagoon outlet channel, which would occur on a weekly basis following implementation of the outlet channel, the average number of harbor seals for each month during bar-closed conditions was used.

Artificial breaching activities would also occur during bar-closed conditions, and the average number of harbor seals for each month during bar-closed conditions was used (Table 2). The number of estimated artificial breaching events is informed by experience. For those months with more frequent historical bar closure events, we assume that two such events could occur in any given year. For other months, we assume that only one such event would occur in a given year. The average total number of events from 2000–2020 is 5 per year, meaning that the estimated take numbers for artificial breaching are conservative. Please see Table 1 in SCWA's application for more information.

For monthly topographic surveys on the barrier beach, potential incidental take of harbor seals is typically calculated as one hundred percent of the seals expected to be encountered. The exception is during the month of April, when surveyors would avoid seals to reduce harassment of pups and/or mothers with neonates. For the monthly topographic survey during April, surveyors would not approach or retreat slowly away from the haul-out when neonates are present, typically resulting in no disturbance. For that survey, the assumption is therefore that only ten percent of seals present would be harassed. The number of seals expected to be encountered is based on the overall average monthly number of seals hauled out as recorded during baseline surveys conducted by SCWA in 2010–20 (Table 2).

TABLE 2—AVERAGE NUMBER OF HARBOR SEALS OBSERVED BY MONTH AND RIVER MOUTH CONDITION, 2010–2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Closed	57	88	133	99	118	113	105	44	24	25	26	54
Open	121	148	138	165	151	197	260	107	56	59	88	90
Overall	106	143	138	159	149	178	227	100	49	38	62	79

For biological and physical habitat monitoring activities in the estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haul-out. The potential for harassment associated with these events is limited to the peripheral haul-outs located in the estuary. In past experience, SCWA typically sees no more than a single harbor seal at these haul-outs, which consist of scattered logs and rocks that often submerge at high tide.

As described previously, California sea lions and northern elephant seals are occasional visitors to the estuary. Based on limited information regarding occurrence of these species at the mouth of the Russian River estuary, we assume there is the potential to encounter one animal of each species per month throughout the year. Lagoon outlet channel activities could potentially occur over six months of the year, artificial breaching activities over eight months, topographic surveys year-round, and biological and physical monitoring in the estuary over eight months. Therefore, we assume that up to 34 incidents of take could occur per year for both the California sea lion and northern elephant seal. Based on past occurrence records, the proposed take authorization for these two species is likely a precautionary overestimate.

TABLE 3—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur [a]	Number of events [b c d]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 118 [e]	Implementation: 3	Implementation: 708.

TABLE 3—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

Number of animals expected to occur [a]	Number of events [b c d]	Potential total number of individual animals that may be taken
Maintenance and Monitoring: May: 118, June: 113, July: 105, Aug: 44, Sept: 24, Oct: 25.	Maintenance: May: 1, June–Sept: 4/month, Oct: 1.	Maintenance: 1,287.
	Monitoring: June–Sept: 2/month, Oct: 1	Monitoring: 597.
		Total: 2,592.
Artificial Breaching		
Oct: 25	Oct: 2	Oct: 50.
Nov: 26	Nov: 2	Nov: 52.
Dec: 54	Dec: 1	Dec: 54.
Jan: 57	Jan: 1	Jan: 57.
Feb: 88	Feb: 1	Feb: 88.
Mar: 133	Mar: 1	Mar: 133.
Apr: 99	Apr: 1	Apr: 99.
May: 118	May: 1	May: 118.
	10 events maximum	Total: 651.
Topographic Beach Surveys		
Jan: 106	1 survey/month	Jan: 106.
Feb: 143		Feb: 143.
Mar: 138		Mar: 138.
Apr: 159		Apr: 16.[g]
May: 149		May: 298.
Jun: 178		Jun: 356.
Jul: 227		Jul: 454.
Aug: 100		Aug: 200.
Sep: 49		Sep: 98.
Oct: 38		Oct: 76.
Nov: 62		Nov: 124.
Dec: 79		Dec: 158.
		Total: 2,167.
Biological and Physical Habitat Monitoring in the Estuary		
1 [f]	107	107.
Total	.....	5,517.

[a] For lagoon outlet channel management and artificial breaching events, average daily number of animals corresponds with data from bar-closed conditions. For topographic beach surveys, average daily number of animals corresponds with overall monthly average data, as river mouth condition cannot be predicted. See Table 2.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching assumed based on historical data. See Table 1 of SCWA's application.

[d] See Table 3 of SCWA's application for total number of estuary monitoring events; note that multiple activities may occur during a single event.

[e] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

[f] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at river haul-outs.

[g] Ten percent of animals present during April surveys are assumed to be taken as a result of enhanced mitigation during period when neonates are most likely to be present.

The take numbers described in the preceding text are annual estimates. Therefore, over the course of the 5-year period of validity of the proposed regulations, we propose to authorize through Letter of Authorization a total of 27,585 incidents of take for harbor seals and 170 such incidents each for the California sea lion and northern elephant seal.

Proposed Mitigation

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 adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' However, NMFS' implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of

conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

SCWA has proposed to continue the following mitigation measures, as implemented during the previous ITAs, designed to minimize impact to affected species and stocks:

- SCWA crews would cautiously approach (*e.g.,* slowly and with minimal sound) the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede.
- SCWA staff would avoid walking or driving equipment through the seal haul-out.
- Crews on foot would make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, again preventing sudden flushes.
- Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach to reduce disturbance of seals from loud noises following a relatively quiet period.

In addition, SCWA proposes to continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous ITAs:

- SCWA will maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.
- If a pup less than one week old is on the beach where heavy machinery would be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA would consult with NMFS to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than one week old are on the beach prior to a breaching event.
- Physical and biological monitoring will not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

For all activities, personnel on the beach would include equipment operators and safety team members. Occasionally, there would be additional people (SCWA staff or regulatory agency staff) on the beach to observe the activities. SCWA staff would be followed by the equipment, which would then be followed by an SCWA vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach. All work would be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring would be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

We have carefully evaluated SCWA's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an LOA 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 the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

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

- Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior).
- 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 important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

SCWA submitted a marine mammal monitoring plan as part of the ITA application. It can be found online at *www.fisheries.noaa.gov/action/sonoma-county-water-agencys-estuary-management-activities-sonoma-county-california-2022.* The plan, which has been successfully implemented (in

slightly different form from the currently proposed plan) by SCWA under previous ITAs, may be modified or supplemented based on comments or new information received from the public during the public comment period. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA will continue to collect data on annual abundance of harbor seals at the Jenner haul-out to monitor trends in population size and annual pup production. Observations of seal behavior will be recorded and reported to monitor any impacts resulting from estuary management and monitoring activities.

Proposed Monitoring Measures

Baseline Monitoring—Baseline data on conditions associated with seal presence at the Jenner haul-out would be collected each year from March 15 through October 15. Generally, monitoring associated with implementation and maintenance of the lagoon outlet channel would occur between May 15 and October 15. Monitoring of artificial breaching activities would occur with each event, generally outside the lagoon management period. Should the mouth remain open during the lagoon management period, monitoring of the Jenner haul-out would continue as described below.

Baseline monitoring will occur at the Jenner overlook from March 15 to October 15. This schedule would capture the pupping and molting seasons, and extend to the end of the beach management period, when management activities are more likely to occur. Surveys would be conducted twice monthly, except for the pupping season (April–May) when surveys would be conducted weekly in order to record the presence of neonate harbor seals. The haul-out will be monitored for 4 hours, scheduled for any consecutive block between the hours of 0800 and 1600. An effort will be made to avoid periods of high tide when scheduling baseline surveys.

All seals hauled out on the beach will be counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using a high powered spotting scope. Monitoring may conclude for the day if weather conditions affect visibility (*e.g.,* heavy fog in the afternoon). Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each thirty minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. When possible, adults and pups will be counted separately. The observer will provide a sketch of where the seals are hauled out on the back of the data sheet.

In addition to the count data, disturbances of the haul-out will be recorded. The methods for recording disturbances would follow a three-point scale adopted by NMFS that represents an increasing seal response to the disturbance (Table 4). For each disturbance event the disturbance source and seal response will be recorded and tallied. Disturbance events corresponding with Levels 2–3 are considered to be harassment. Weather conditions will also be recorded at the beginning of each survey.

TABLE 4—SEAL RESPONSE TO DISTURBANCE

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	Flight	All retreats (flushes) to the water.

Estuary Management Event Monitoring, Lagoon Outlet Channel—Should the mouth close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A 1-day pre-outlet channel survey would be made within 1 to 3 days prior to constructing the outlet channel. The haul-out would be monitored on the day the outlet channel is constructed and daily for up to 2 days during channel excavation activities. Monitoring would also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period.

Monitoring of outlet channel maintenance would correspond with the monitoring described under the ''Baseline Monitoring'' section above. Methods would follow the count and disturbance monitoring protocols described in the ''Baseline Monitoring'' section.

Estuary Management Event Monitoring, Artificial Breaching Events—In accordance with the BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two such breachings during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the period of validity of these proposed regulations. Methods would follow the census and disturbance monitoring protocols described in the ''Baseline Monitoring'' section, which were also used for the 1996 to 2000 monitoring events and since 2009. The exception, as for lagoon management events, is that duration of monitoring is dependent upon duration of the event. On the day of the management event, pinniped monitoring begins at least one hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

For all counts, the following information would be recorded in 30-minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4)

estimated distances between source of disturbance and pinnipeds; (5) weather conditions (*e.g.,* temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than one week old) observations. Characteristics of a neonate pup include: Body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA would contact the NMFS stranding response network immediately and also report the incident to NMFS' West Coast Regional Office and Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Staffing—Monitoring would be conducted by qualified individuals. Generally, these individuals would include professional biologists employed by SCWA or volunteers trained by the Stewards and SCWA. All volunteer monitors would be required to attend a classroom-style training and on site mentoring by an experienced observer. Training would cover the MMPA and conditions of the LOA, SCWA's Pinniped Monitoring Program, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification would include harbor seal, California sea lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area (*i.e.,* northern fur seals, Guadalupe fur seals, Steller sea lions).

Generally, volunteers would collect baseline data on Jenner haul-out use during the bi-weekly monitoring events. A schedule for this monitoring would be established with Stewards once volunteers are available for the monitoring effort. SCWA staff would monitor lagoon outlet channel excavation, maintenance activities, artificial breaching events, and biological or physical monitoring activities at the Jenner haul-out.

Reporting

SCWA is required to submit an annual report on all activities and marine mammal monitoring results to NMFS within 90 days following the end of the monitoring period. These reports would contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and pinnipeds when disturbance occurs;
- Weather conditions (*e.g.,* temperature, wind, etc.);
- Haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- Tide levels and estuary water surface elevation; and
- Pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under previous authorizations. Previous monitoring reports are available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities.*

While the observed take in all years was significantly lower than the level authorized, it is possible that incidental take in future years could approach the level authorized. Actual take is dependent largely upon the number of water level management events that occur, which is unpredictable. Take of species other than harbor seals depends upon whether those species, which do not consistently utilize the Jenner haul-out, are present. The authorized take, though much higher than the actual take, is justified based on conservative estimated scenarios for animal presence and necessity of water level management. No significant departure from the method of estimation is used for these proposed regulations (see Estimated Take) for the same activities in 2022–27.

Since 2009 SCWA has been conducting baseline monitoring of the Jenner haul-out and several nearby coastal and estuary sites (as described in the 2016 Monitoring Plan, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*). The purpose of baseline monitoring was to describe the conditions under which harbor seals haul out and how seals respond to implementation of the estuary management program. Monitoring data illustrate a strong seasonal pattern in most years where seals are most abundant during the spring and summer months (see Figure 2 of SCWA's 2021 Monitoring Plan). Seasonal variation in the abundance of harbor seals is commonly observed throughout their range. Seal abundance at the Jenner haul-out was shown to increase throughout the day, but only during the spring and winter months (see Figure 3 of SCWA's 2021 Monitoring Plan). Seal abundance was weakly affected by tide height with higher tides shown to reduce seal abundance (see Figure 4 of SCWA's 2021 Monitoring Plan), based on direct observations, this is likely due to waves washing over the haul-out during these high tides. Seal abundance was also greater when the river mouth was open to the ocean (see Figure 5 of SCWA's 2021 Monitoring Plan).

In addition to baseline monitoring, monitoring during water level management activities (breaching and lagoon outlet implementation) has been ongoing since 2009. Recent observations of seals during breaching activities indicate that seals leave the Jenner haul-out as safety crews approach their haul-out ahead of equipment. Depending on the location of their haul-out seals have also remained on the beach during breaching activities. The number of harbor seals hauled out at the mouth of the estuary declined when the barrier beach was closed and increased soon after it was breached. Seals that left the haul-out just prior to breaching have returned to the beach within hours of completion of activities and typically return prior to the next morning (see prior SCWA monitoring reports, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*).

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'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of 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).

Although SCWA's estuary management activities may disturb pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. While these impacts can occur year-round, they occur sporadically and for limited duration (*e.g.,* a maximum of two consecutive days for water level management events). Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. While disturbance may occur during a sensitive time (during the March 15–June 30 pupping season), mitigation measures have been specifically designed to further minimize harm during this period and eliminate the possibility of pup injury or mother-pup separation.

No injury, serious injury, or mortality is anticipated, nor is the proposed action likely to result in long-term impacts such as permanent abandonment of the haul-out. Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out were previously considered to be a potential result of increased presence of humans and equipment on the beach. However, 10 years of monitoring has not shown any such impacts to seal usage of the beach. Nevertheless, SCWA will continue to implement the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past 20 years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration.

No pinniped stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Existing data suggest that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see Proposed Mitigation for more details). Further, the continued, and increasingly heavy (see figures in SCWA documents), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

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, we preliminarily find that the total marine mammal take from SCWA's construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 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 annual amount of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all species (see Table 3). However, this represents an overestimate of the number of individuals harassed annually over the duration of the proposed regulations, because these totals represent much smaller numbers of individuals that may be harassed multiple times. 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 marine mammals implicated by the specified activity. Therefore, we have 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 SCWA estuary management 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 previous year 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 SCWA regarding practicability) on an annual or biennial 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.

SCWA's monitoring program (see Proposed Monitoring) would be managed adaptively. Changes to the proposed monitoring program may be adopted if they are reasonably likely to better accomplish the MMPA monitoring goals described previously or may better answer the specific questions associated with SCWA's monitoring plan.

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)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA is not required.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning SCWA's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare the final rule and make final determinations on whether to issue the requested authorization. This notice 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. SCWA is the sole entity that would be subject to the requirements in these proposed regulations, and the Sonoma County Water Agency is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Under the RFA, governmental jurisdictions are considered to be small if they are ''. . . governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. . . .'' As of the 2020 census, Sonoma County, CA had a population of nearly 500,000 people. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports. Send comments regarding any aspect of this data collection, including suggestions for reducing the burden, to NMFS.

List of Subjects in 50 CFR Part 217

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

Dated: January 13, 2022.

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 TAKING AND IMPORTING OF MARINE MAMMALS

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

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

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

Subpart A—Taking Marine Mammals Incidental to Russian River Estuary Management Activities

Sec.

217.1 Specified activity and specified geographical region.
217.2 Effective dates.
217.3 Permissible methods of taking.
217.4 Prohibitions.
217.5 Mitigation requirements.
217.6 Requirements for monitoring and reporting.
217.7 Letters of Authorization.
217.8 Renewals and modifications of Letters of Authorization.
217.9 [Reserved]
217.10 [Reserved]

§ 217.1 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Sonoma County Water Agency (SCWA) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to estuary management activities.

(b) The taking of marine mammals by SCWA may be authorized in a Letter of Authorization (LOA) only if it occurs at Goat Rock State Beach or in the Russian River estuary in California.

§ 217.2 Effective dates.

Regulations in this subpart are effective from April 21, 2022, through April 20, 2027.

§ 217.3 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.7, the Holder of the LOA (hereinafter ''SCWA'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.1(b) of this chapter by Level B harassment associated with estuary management activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) [Reserved]

§ 217.4 Prohibitions.

Except for the takings contemplated in § 217.3 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.7, it is unlawful for any person to do any of the following in connection with the activities described in § 217.1 of this chapter:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.7;

(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.

§ 217.5 Mitigation requirements.

When conducting the activities identified in § 217.1(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.7 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 SCWA, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) If SCWA observes a pup that may be abandoned, it shall contact the National Marine Fisheries Service (NMFS) West Coast Regional Stranding Coordinator immediately and also report the incident to NMFS Office of Protected Resources within 48 hours. Observers shall not approach or move the pup.

(b) SCWA crews shall cautiously approach the haul-out ahead of heavy equipment.

(c) SCWA staff shall avoid walking or driving equipment through the seal haul-out.

(d) Crews on foot shall make an effort to be seen by seals from a distance.

(e) All work shall be completed as efficiently as possible and with the smallest amount of heavy equipment possible.

(f) Boats operating near river haul-outs during monitoring shall be kept within posted speed limits and driven as far from the haul-outs as safely possible.

(g) SCWA shall implement the following mitigation measures during pupping season (March 15–June 30):

(1) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach;

(2) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(3) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and the California Department of Fish and Wildlife to determine the appropriate course of action. SCWA shall determine if pups less than one week old are on the beach prior to a breaching event.

(4) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

§ 217.6 Requirements for monitoring and reporting.

(a) Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(b) Reporting:

(1) Annual reporting:

(i) SCWA shall submit an annual summary report to NMFS not later than ninety days following the end of a given calendar year. SCWA shall provide a final report within thirty days following resolution of comments on the draft report.

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

(A) The number of seals taken, by species and age class (if possible);

(B) Behavior prior to and during water level management events;

(C) Start and end time of activity;

(D) Estimated distances between source and seals when disturbance occurs;

(E) Weather conditions (*e.g.,* temperature, wind, etc.);

(F) Haul-out reoccupation time of any seals based on post-activity monitoring;

(G) Tide levels and estuary water surface elevation; and

(H) Seal census from haul-out monitoring.

(2) [Reserved]

(c) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 217.1(a) clearly causes the take of a marine mammal in a prohibited manner, SCWA shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS and the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions;

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(2) In the event that SCWA discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), SCWA shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (c)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SCWA discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 217.1(a) (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SCWA shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Pursuant to paragraphs (c)(2–3) of this section, SCWA may use discretion in determining what injuries (*i.e.,* nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (*i.e.,* will likely result in death) or that are likely caused by human interaction (*e.g.,* entanglement, gunshot). Also pursuant to sections paragraphs (c)(2–3) of this section, SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

§ 217.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SCWA 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,

SCWA 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, SCWA must apply for and obtain a modification of the LOA as described in § 217.8.

(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.

§ 217.8 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(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 an 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 217.7 for the activity identified in § 217.1(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 SCWA 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 SCWA's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound 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 217.7, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 217.9 [Reserved]

§ 217.10 [Reserved]

[FR Doc. 2022–00996 Filed 1–20–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–BK79

Pacific Island Fisheries; Amendment 5 to the Fishery Ecosystem Plan for the American Samoa Archipelago; American Samoa Bottomfish Fishery Rebuilding Plan

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

ACTION: Announcement of availability of fishery ecosystem plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Ecosystem Plan for the American Samoa Archipelago (FEP). If approved, Amendment 5 would establish a rebuilding plan for the American Samoa bottomfish stock complex. The Council recommended Amendment 5 to rebuild the bottomfish stock, which is overfished and experiencing overfishing.

DATES: NMFS must receive comments on Amendment 5 by March 22, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0006, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0006, in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.
- *Instructions:* NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record, and NMFS will generally post them for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), 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).

Amendment 5 includes a draft environmental assessment (EA) and regulatory impact review (RIR) that analyzes the potential impacts of the proposed action and alternatives considered. Copies of Amendment 5, including the EA and RIR, and other supporting documents, are available at *https://www.regulations.gov* or the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Heather Cronin, Sustainable Fisheries, NMFS PIR, 808–725–5179.