

great white sharks or killer whales are seen in the area, and if predators are seen, eastern Steller sea lions must not be disturbed until the area is free of predators; (9) keep voices hushed and bodies low in the visual presence of pinnipeds; (10) conduct seabird observations at North Landing on Southeast Farallon Island within an observation blind to remain shielded from the view of hauled out pinnipeds; (11) crawl slowly towards seabird nesting boxes on Ano Nuevo Island if pinnipeds are within the researchers' field of vision; (12) coordinate visits for seabird and pinniped research to intertidal areas of Southeast Farallon Island to reduce potential take; (13) coordinate all research goals on Ano Nuevo Island to minimize the number of trips to the island and coordinate monitoring schedules so that areas near any pinnipeds would be accessed only once per visit; and (14) the lead biologist will serve as an observer to evaluate incidental take and halt any research activities should the potential for incidental take become too great.

Monitoring

PRBO researchers, and their designees would: (1) record the date, time, and location (or closest point of ingress) of each visit; (2) record marine mammal behavior patterns observed before, during, and after the activities; (3) record the number of Steller sea lions present at each location; (4) if applicable, note the presence of any offshore predators (date, time, number, species).

Reporting

PRBO, and its designees, will submit a draft final report to NMFS within 90 days after the expiration of the IHA and will submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft final report.

National Environmental Policy Act (NEPA)

In 2007, NMFS prepared a draft Environmental Assessment (EA) on the issuance of an IHA to PRBO to take marine mammals by Level B behavioral harassment incidental to conducting seabird research in central California. The draft EA was released for public review and comment along with the application and the proposed IHA (72 FR 41294, July 27, 2007). All comments were addressed in full in the **Federal Register** Notice of Issuance of an IHA for PRBO (72 FR 71121, December 14, 2007). At that time, NMFS determined that conducting the seabird research would not have a significant impact on the quality of the human environment

and issued a Finding of No Significant Impact (FONSI).

For this proposed action, PRBO has requested to incidentally harass 20 Steller sea lions, (i.e., 4 more than what was analyzed in the 2007 EA, which expands the scope of the previously analyzed action) during the conduct of pinniped and seabird research. Thus, NMFS has prepared a supplemental EA (SEA) to address new available information regarding the effects of PRBO's seabird and pinniped research activities that may have cumulative impacts to the physical and biological environment. NMFS has issued a FONSI for the SEA regarding PRBO's activities. The analysis in the 2007 EA and 2008 SEA concluded that issuance of an IHA would not significantly affect the quality of the human environment. In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Endangered Species Act (ESA)

NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a section 7 consultation under the ESA with the NMFS Headquarters' Office of Protected Resources, Endangered Species Division. On November 18, 2008, NMFS issued a Biological Opinion and concluded that the issuance of an IHA is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has also issued an incidental take statement (ITS) for Steller sea lions pursuant to section 7 of the ESA. The ITS contains reasonable and prudent measures for implementing terms and conditions to minimize the effects of this take.

Determinations

For the reasons discussed in this document and in the identified supporting documents, NMFS has determined that the impact of seabird and pinniped research operations on Southeast Farallon Island, Ano Nuevo Island, and Point Reyes National Seashore in central California would result in Level B behavioral harassment only, of small numbers of California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions hauled out in the vicinity of the research area; and would have a negligible impact on the affected species. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the

affected species or stock for subsistence uses does not apply for this proposed action.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Authorization

NMFS has issued an IHA to PRBO, and its designees, for the potential harassment of small numbers of California sea lions, harbor seals, northern elephant seals, and Steller sea lions incidental to conducting of seabird and pinniped research on Southeast Farallon Island, Ano Nuevo Island, and Point Reyes National Seashore, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 15, 2008.

James H. Lecky,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-AX32

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Anchorage Marine Terminal Redevelopment Project

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

ACTION: Notice; receipt of application for rulemaking and subsequent letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Port of Anchorage (Port) and the U.S. Department of Transportation Maritime Administration (MARAD) for authorization to take marine mammals incidental to the Port's Marine Terminal Redevelopment Project (Project) for the period of July 2009 through July 2014. Pursuant to Marine Mammal Protection Act (MMPA) implementing regulations, NMFS is announcing receipt of the Port's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Port's application and request.

DATES: Comments and information must be received no later than January 20, 2009.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.0648-AX32@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713-2289.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Port's application may be obtained by writing to the address specified above (see **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#application>.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Summary of Request

Summary of Request

On November 20, 2008, NMFS received an application from the Port and MARAD requesting authorization for the take of four species of marine mammals incidental to construction

activities related to Port expansion, over the course of 5 years. According to the application, the existing dock can no longer be widened nor salvaged due to its advanced age and state of disrepair. The dock supporting the three cranes today was completed in 1961 and its projected life expectancy was 25-30 years. Construction necessitates use of impact and vibratory pile drivers to install open cell sheet, 36 inch steel, and H- piles to construct the waterfront bulkhead structure that will facilitate increased dock space and the fendering system. In-water pile driving would occur during spring, summer, and fall months, annually, until the new port is completed. Demolition involving a chipping hammer is the likely method for removing the present dock; however, blasting may also be required.

The new dock face will include 7,430 ft (2,265 m) of vertical sheet pile wharf and 470 ft (143 m) for a dry barge berth; however, the entire sheet pile wall will extend 9,893 ft (3,015 m) parallel to the shore. The completed marine terminal will include seven modern dedicated ship berths; two dedicated barge berths; rail access; modern shore-side facilities; equipment to accommodate cruise passengers, cement bulk, roll on/roll off and load on/load off cargo, containers, general cargo, Stryker Brigade Combat Team deployments, general cargo on barges, and petroleum, oils, and lubricants; and additional land area to support expanding military and commercial operations.

Harassment to marine mammals could occur from in-water pile driving and during demolition of the existing dock. In 2008, NMFS issued the Port and MARAD a one-year Incidental Harassment Authorization (IHA) authorizing harassment of Cook Inlet beluga whales (*Delphinapterus leucas*), harbor porpoises (*Phocoena phocoena*), killer whales (*Orcinus orca*), and harbor seals (*Phoca vitulina*). Included in the conditions are mitigation and monitoring measures. Monitoring reports collected under this IHA will provide valuable marine mammal, specifically beluga whale, presence/absence, temporal, group size and composition, and behavioral data as well as any observed effects from exposure to pile driving noise.

NMFS prepared an *Environmental Assessment on the Issuance of an Incidental Harassment Authorization and Subsequent Rulemaking for Take of Small Numbers of Marine Mammals Incidental to the Port of Anchorage Terminal Redevelopment Project, Anchorage, Alaska* for its issuance of the 2008 IHA, which analyzes and discusses potential impacts on marine

mammals and their habitat from the specified activity. In summary, harassment from pile driving associated with the Project may result in short-term, mild to moderate behavioral and physiological responses but will not exceed Level B harassment due to animals' natural reaction to avoid loud sounds and implementation of mitigation measures (e.g., mandatory shut downs). Anticipated behavioral reactions of marine mammals include altered headings, fast swimming, changes in dive, surfacing, respiration, and feeding patterns, and changes in vocalizations. Physiologically, increased stress hormone production may occur. In its analysis for issuance of the IHA, NMFS determined harassment would be limited to Level B, will have a negligible impact on affected marine mammal species or stocks, and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence purposes. To date, monitoring reports have indicated no adverse reactions or abrupt change in behavior of beluga whales to in-water pile driving operations.

Demolition activities will also be subject to monitoring and mitigation measures that are likely to be similar to those for pile driving (e.g., establishment of safety zones, shut down procedures, etc.). NMFS intends to prepare a supplemental EA to analyze impacts from demolition and establishment of modified, extended safety and harassment isopleths, as determined from the 2008 acoustic study conducted by the Port.

A detailed description of the Project can be found in the application and the NMFS prepared EA. These documents can be found at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>

Information Sought

Interested persons may submit information, suggestions, and comments concerning the Port's and MARAD's request (see **ADDRESSES**). All information, suggestions, and comments related to the request and NMFS' development and implementation of regulations governing the incidental taking of marine mammals by the Port will be considered by NMFS in developing, if appropriate, regulations governing the issuance of letters of authorization.

Dated: December 15, 2008.

James H. Lecky,

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

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