

Species (APPS), <https://apps.nmfs.noaa.gov> Web site by searching the permit number within the Search Database page. The application, issued permit, Final Environmental Assessment, Finding of No Significant Impact and supporting documents are also available by appointment, or upon the following:

- **Mail:** Submit written requests to Elif Fehm-Sullivan, Fisheries Biologist, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814.

- **Fax:** (916) 930-3629.

- **Email:** [SJRspring.salmon@noaa.gov](mailto:SJRspring.salmon@noaa.gov).

You may access a copy of Final EA by one of the following:

- Visit the NMFS Reintroduction Web site at <http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm>.

- Call (916) 930-3723 and request to have a CD or hard copy mailed to you.

- Obtain a CD or hard copy by visiting the NMFS Central Valley office at 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Elif Fehm-Sullivan, National Marine Fisheries Service, 650 Capitol Mall, Suite 5-100, Sacramento, CA 95814 (916-930-3723).

#### SUPPLEMENTARY INFORMATION:

#### Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222-226) governing listed fish and wildlife permits.

#### Species Covered in This Notice

This notice is relevant to ESA listed species from the Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (spring-run Chinook) evolutionarily significant unit (ESU).

#### Permit 14868

NMFS formally initiated a public review period for review of the permit application through publication of a Notice of Receipt (NOR) of the Permit

application in the **Federal Register** on February 4, 2011, outlining the research and enhancement activities proposed by FWS and take of ESA-listed spring-run Chinook proposed under Permit 14868 (76 FR 64005). The notice of receipt included a 30-day public comment period for this permit application, which closed on March 7, 2011. In addition, NMFS held public workshops for the section 10(a)(1)(A) permit application in Chico, California on February 3, 2011; in Fresno, California on February 7, 2011; and in Los Banos, California on February 8, 2011. A combined total of 113 public comments were submitted to NMFS by various entities on the permit application and each of these comments were considered when drafting the Environmental Assessment (EA).

NMFS formally initiated a public review period for the EA of the permit application through publication of a Notice of Availability (NOA) of the Permit application EA in the **Federal Register** on April 19, 2012, outlining the research and enhancement activities NMFS was proposing to allow under Permit 14868 (76 FR 23463). The notice of availability included a 30-day public comment period for this permit application EA, which closed on May 21, 2012. A combined total of 51 public comments were submitted to NMFS by various entities on the permit application EA and these comments with responses are incorporated in the Final EA.

Permit 14868 authorizes FWS, under the auspices of the San Joaquin River Restoration Project (SJRRP), to collect, transport, rear, and tag 560 Feather River Fish Hatchery (FRFH) Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) eggs or juveniles during the first three years of the permit annually—and 2,760 eggs or juveniles in the fourth and fifth years, and establish broodstock in the Interim and Salmon Conservation and Research Facility (SCARF) facilities. In addition, the permit authorizes a low level of intentional mortality of 60 FRFH surplus juvenile spring-run Chinook salmon annually for pathogen analysis prior to transport to ensure that pathogens will not be transferred to either the Interim Facility or the SCARF.

Dated: November 8, 2012.

**Angela Somma,**

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012-27663 Filed 11-13-12; 8:45 am]

**BILLING CODE 3510-22-P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

RIN 0648-XC139

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bird Mitigation Research in the Farallon National Wildlife Refuge

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

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

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Fish and Wildlife Service, allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to a bird mitigation research trial.

**DATES:** Effective November 7, 2012, through November 6, 2013.

**ADDRESSES:** A copy of the IHA, application, and Environmental Assessment are available by visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427-8401.

#### SUPPLEMENTARY INFORMATION:

#### Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the

mitigation, monitoring, and reporting of such takings are set forth. 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.”

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

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

#### Summary of Request

On April 17, 2012, NMFS received an application from the USFWS requesting an IHA for the take, by Level B harassment, of small numbers of five marine mammal species incidental to a bird mitigation research trial in the Farallon National Wildlife Refuge. In accordance with the MMPA and implementing regulations, NMFS issued a notice in the **Federal Register** on August 27, 2012 (77 FR 51773), requesting comments from the public on the proposed issuance of an IHA.

#### Description of the Specified Activity

A complete description of the specified activity may be found in NMFS’ **Federal Register** notice (77 FR 51773, August 27, 2012) and a summary is provided here. The USFWS will conduct a research trial to assess potential bird hazing methods that could be used to minimize the risk of rodent bait ingestion by non-target species, if such an alternative action is chosen, during a proposed house mouse eradication. Removal of the invasive house mice would protect seabirds, assist in the recovery of native plants

and endemic species, and prevent the spread of disease to marine mammals.

Potential gull hazing methods—which include pyrotechnics, air cannons, helicopters, and trained dogs—may incidentally result in the harassment of pinnipeds that haul out on the island. Up to five biologists would be present on the islands to implement the research trial and monitor any pinniped disturbance. Part of the USFWS’ goal during this trial is to determine which hazing methods are most effective at (1) deterring birds from roosting on the island and (2) minimizing the impacts to pinnipeds. Therefore, researchers would carefully monitor pinnipeds haul-outs during hazing and adjust the research trial to reduce disturbance. Further details regarding the different gull hazing techniques are provided in HSWAC’s IHA application (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>) and NMFS’ **Federal Register** notice (77 FR 51773, August 27, 2012).

#### Dates and Duration of Activity

The USFWS plans to conduct their research over a 2–4 week period between November 1, 2012 and January 31, 2013. During this time, gull roosts will be visited at least twice a day by researchers for hazing or monitoring. Most visits will last about 15 minutes, although human presence may last for 2–5 hours per day if necessary. Most hazing will take place a few hours before and after sunrise and sunset. Sporadic gull hazing may also occur as needed throughout the day and night.

#### Region of Activity

The research trial will take place in the Farallon National Wildlife Refuge, a group of islands about 30 miles offshore of San Francisco, California. The refuge was established in 1909 specifically to protect sea birds and pinnipeds and it currently sustains the largest sea bird breeding colony south of Alaska, including 30 percent of California’s nesting sea birds. Five pinniped species also breed or haul out on the Farallon Islands. The research trial will be conducted in the South Farallon Islands, which are composed of Southeast Farallon Island, West End Island, Aulon Islets, and Saddle Rock. Most of the gull hazing is expected to occur within Southeast Farallon Island; however, hazing may be implemented around other areas of the island if gulls attempt to roost. The majority of the island’s perimeter is considered a potential haul-out for pinnipeds. Species-specific haul-out and pupping sites were provided in NMFS’ **Federal**

**Register** notice (77 FR 51773, August 27, 2012).

#### Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound’s pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound’s loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are “re: 20  $\mu$ Pa” and “re: 1  $\mu$ Pa,” respectively. Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

The use of biosonics, pyrotechnics, and zon guns may result in elevated sound levels that exceed NMFS’ threshold for in-air harassment. Current NMFS practice regarding in-air exposure of pinnipeds to sound generated from human activity is that the onset of Level B harassment for harbor seals and all other pinnipeds is 90 dB and 100 dB re: 20 $\mu$ Pa, respectively. The USFWS intends to use bird hazing methods that cause the least amount of marine mammal harassment, while still preventing birds from settling on the island. Biosonics, pyrotechnics, and zon guns will be initially used at distances to avoid the onset of Level B harassment. Only if bird hazing methods are still unsuccessful from distant locations will these techniques be used closer to pinniped haul-outs.

#### Comments and Responses

A notice of proposed IHA and request for public comment was published on

August 27, 2012 (77 FR 51773). During the 30-day public comment period, the Marine Mammal Commission (Commission) provided the only substantive comments. The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures.

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

The following marine mammal species may be present in the project area during the research trial: Northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina richardii*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), and Northern fur seals (*Callorhinus ursinus*). Information on species status, distribution, and seasonality was provided in NMFS' **Federal Register** notice (77 FR 51773, August 27, 2012).

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

Variable numbers of northern elephant seals, harbor seals, Steller sea lions, California sea lions, and northern fur seals typically haul out around the perimeter of South Farallon Island. Pinnipeds likely to be affected by the bird mitigation trial are those that are hauled out on land at or near the location of gull hazing. Incidental harassment may result if hauled out animals are disturbed by elevated sound levels or the presence of lasers, spotlights, humans, helicopters, or dogs. Although pinnipeds would not be deliberately approached by researchers, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of roosting birds. Disturbance may result in behavioral reactions ranging from an animal simply becoming alert (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not necessarily consider the lesser reactions to constitute Level B behavioral harassment, but does assume that pinnipeds that move greater than one meter or change the speed or direction of their movement in response to the gull hazing methods are behaviorally harassed.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. Due to the limited duration of the research trial (maximum 4 weeks of periodic daily hazing methods), disturbance of pinnipeds will only last for short periods of time and will not occur continuously over the 4-week period. Pinnipeds are unlikely to incur

significant impacts to their survival because potential harassment will be sporadic and of low intensity. Although there is a risk of injury or mortality if pinniped pups are crushed during a stampede, the USFWS expects most pups to have left the island before November.

In summary, NMFS believes it highly unlikely that the USFWS' activities will result in the injury, serious injury, or mortality of pinnipeds. Any harassment resulting from the bird mitigation research trial is expected to be in the form of Level B behavioral harassment.

#### **Anticipated Effects on Habitat**

The USFWS' activity is not expected to result in the physical alteration of marine mammal habitat. Any impacts resulting from the activity (e.g., short periods of ensonification) will be temporary and no major breeding habitat will be affected. There are no expected impacts to pinniped prey species. Critical habitat has been defined for Steller sea lions as a 20 nautical mile buffer around all major haul-outs and rookeries, as well as associated terrestrial, air, and aquatic zones, which includes Southeast Farallon Island. Overall, the activity is not expected to cause significant impacts on habitats used by the marine mammal species in the project area or on the food sources that they utilize.

#### **Mitigation Measures**

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. There are no relevant subsistence uses of marine mammals implicated by this action. The following measures are required in the USFWS' authorization:

##### *Temporal Restriction*

The USFWS will conduct the bird mitigation research trial at a time when there are fewer birds on the island and outside of pinniped pupping season. The research schedule will greatly reduce the possibility of injury, serious injury, or mortality to pinnipeds resulting from pups being crushed during a stampede. Pregnant northern elephant seals begin to arrive on the island in late December and early January. Remaining pups from the

previous breeding season typically leave the island by November. While hazing operations are not expected to overlap with the presence of northern elephant seal pups, the USFWS will actively avoid pregnant females and pups during the research trial by having a biologist identify and map where these individuals are located.

##### *Limited Use of Pyrotechnics*

The USFWS will place pyrotechnics in locations so as to avoid exceeding the hearing threshold of pinnipeds. Researchers will first use pyrotechnics as far away as possible from haul-out sites and gradually get closer if necessary, while monitoring behavioral reactions of pinnipeds. Researchers will not use pyrotechnics directly over a major haul-out site.

##### *Limited Use of Air Cannons*

The USFWS will place air cannons in locations so as to avoid exceeding the hearing threshold of pinnipeds. Researchers will use the lowest detonation volume if haul-outs are close, but may experiment with increasing the volume at farther distances. Behavioral response of pinnipeds will be monitored and the air cannon volume will be adjusted at the first sign of large-scale disturbance.

##### *Slow Sequential Approaches of Helicopters*

To avoid or minimize pinniped disturbance, helicopter flights in areas near haul-outs will use a slow sequential approach of decreasing altitude in order to habituate marine mammals to the sound.

##### *Slow and Cautious Approaches to Haul-Outs*

Any researchers needed to investigate gull roosting areas, conduct hazing, or monitor pinniped responses, will approach haul-outs slowly and cautiously in order to avoid unnecessary disturbance to pinnipeds.

##### *Limited Use and Retrieval of Kites and Radio-Controlled Aircraft*

Kites and radio-controlled aircraft will be used sparingly around harbor seals, as they may be more easily spooked than other pinniped species. If a kite or radio-controlled aircraft falls into a haul-out area, then it will either be: (1) Left in place if it could not be retrieved safely or without causing major pinniped disturbance; or (2) retrieved using a slow methodical approach to avoid major pinniped disturbance. Retrieval may also occur at a later time when pinnipeds are either absent or in fewer numbers.

### Restricted Use of Trained Dogs

Dogs will be trained to not harass pinnipeds and will have the necessary immunizations and certificates to ensure that no diseases are transmittable. Dogs will be kept at least 30 meters away from pinnipeds to avoid unnecessary harassment.

### Visual Observers

The USFWS will designate at least one NMFS-approved protected species observer to monitor pinnipeds and record information before, during, and after hazing operations. The observer will be located at the peak of the island's center, which provides visibility of about 70 percent of the island. If hazing operations take place in areas not visible from the island's peak, additional observers will be used to monitor and record information from other locations. Observers will also monitor offshore areas for predators (e.g., white sharks) to avoid harassing pinnipeds when predators are in nearshore waters. Observers will be equipped to stop hazing operations if they result in unexpected pinniped reactions (e.g., stampeding).

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

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety and practicality of implementation.

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

### Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where

applicable, set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The USFWS will designate at least one NMFS-approved protected species observer to monitor pinnipeds and collect information before, during, and after hazing operations. This observer will be located at the peak of the island's center, which provides visibility of about 70 percent of the island. If hazing operations take place in areas not visible from the island's peak, additional observers will be used to monitor and record information from other locations. Before hazing operations begin, observers will record the number and species of animals in the area. During hazing operations, observers will record the species that react to hazing operations, any change in behavior that occurs, the number of animals that flush (or leave their haul-out), and the number of flushing events. More specifically, observers will record pinniped reactions using a 3-point scale where 1 = a reaction not considered harassment (e.g., head raise); 2 = animal moves greater than 1 meter or changes direction, but no flushing occurs; and 3 = flushing occurs. This scale has been used for previous IHAs to record pinniped reactions and the monitoring results will be used by NMFS to assess the intensity of harassment. After the hazing operations, observers will record the number and species of animals remaining in the area. Observers will be in communication with the hazing trial implementation staff in order to relay information on pinniped behavioral responses. Observers will be able to halt hazing activities if they result in unexpected pinniped reactions (e.g., stampeding).

While not a required monitoring measure, if funding and personnel are available, the USFWS will also monitor sound levels of biosonics, pyrotechnics, and zon guns to evaluate the potential exposure levels of pinnipeds to these techniques. If practicable, the USFWS will measure received sound levels at varying distances from the source to determine the distance at which NMFS' in-air thresholds are reached. Results from these measurements will potentially allow the USFWS to determine how far away they need to conduct certain hazing methods.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality, the USFWS will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to [Michael.Payne@noaa.gov](mailto:Michael.Payne@noaa.gov) and [Michelle.Magliocca@noaa.gov](mailto:Michelle.Magliocca@noaa.gov) and the Southwest Regional Stranding Coordinator at 562-980-3230 ([Sarah.Wilkin@noaa.gov](mailto:Sarah.Wilkin@noaa.gov)). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the USFWS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USFWS will not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the USFWS will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to [Michael.Payne@noaa.gov](mailto:Michael.Payne@noaa.gov) and [Michelle.Magliocca@noaa.gov](mailto:Michelle.Magliocca@noaa.gov) and the Southwest Regional Stranding Coordinator at 562-980-3230 ([Sarah.Wilkin@noaa.gov](mailto:Sarah.Wilkin@noaa.gov)). The report will include the same information identified in the paragraph above. Activities could continue while NMFS reviews the circumstances of the incident. NMFS will work with the USFWS to determine whether modifications in the activities are appropriate.

In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is

not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USFWS will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to [Michael.Payne@noaa.gov](mailto:Michael.Payne@noaa.gov) and [Michelle.Magliocca@noaa.gov](mailto:Michelle.Magliocca@noaa.gov) and the Southwest Regional Stranding Coordinator at 562-980-3230 ([Sarah.Wilkin@noaa.gov](mailto:Sarah.Wilkin@noaa.gov)), within 24 hours of the discovery. The USFWS will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

#### Estimated Take by Incidental Harassment

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

Current NMFS practice regarding in-air exposure of pinnipeds to sound generated from human activity is that the onset of Level B harassment for harbor seals and all other pinnipeds is 90 dB and 100 dB re: 20µPa, respectively. These threshold levels are based on monitoring of marine mammal reactions to rocket launches at Vandenberg Air Force Base. In those studies, not all harbor seals left a haul-out during a launch unless the sound exposure level was 100 dB or above and only short-term effects were detected.

The USFWS estimated take by using the maximum pinniped counts from weekly censuses in November 2006–2011. These numbers represent the highest count ever recorded for each species during the month of November since 2006. November typically has the highest pinniped counts compared to December and January (the period when the activity would take place). These numbers provide the best available information on haul-outs in the action area. The USFWS' proposed take estimates were simply the maximum weekly counts (Northern elephant seal = 328; harbor seal = 81; Steller sea lion = 224; California sea lion = 3,538; Northern fur seal = 109. However, in order to estimate the maximum number

of takes over the length of the trial, NMFS multiplied these numbers by four to account for the maximum 4-week trial period. NMFS' take estimates are shown in Table 1.

TABLE 1—AUTHORIZED TAKE OF PINNIPEDS FOR THE ACTIVITY

Species	Total
Northern elephant seal .....	1,312
Harbor seal .....	324
Steller sea lion .....	224
California sea lion .....	14,152
Northern fur seal .....	436

NMFS believes these take estimates are conservative because the USFWS used maximum counts of hauled out pinnipeds during the months of the activity and these numbers do not take mitigation measures into consideration. Furthermore, NMFS expects many of the same animals to haul out throughout the month; so these take estimates likely overestimate the number of individuals to be harassed during the trial. Researchers will make every effort to minimize the take of pinnipeds (e.g., by using hazing methods at the farthest possible distance from haul-outs); moreover, many pinnipeds do not haul out near typical gull roosts. Frequency of harassment will depend upon the location of gulls and the success of hazing operations. Pinnipeds may be disturbed as much as twice per day for the duration of the 2–4 week trial. Table 1 shows the maximum number of animals that may be harassed during the activity; however, the USFWS' required mitigation measures will likely result in fewer takes.

#### Negligible Impact and Small Numbers Analysis and Determinations

NMFS has defined "negligible impact" in 50 CFR 216.103 as " \* \* \* an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals will not be exposed to activities or sound levels which will result in injury (PTS), serious injury, or mortality. Rather, NMFS expects that some marine mammals may be exposed to elevated

sound levels or visual stimuli that will result in Level B behavioral harassment. Marine mammals may avoid the area or temporarily change their behavior (e.g., move towards the water) in response to research presence or elevated sound levels. No impacts to marine mammal reproduction are expected because the activity will not take place during pinniped pupping season.

Required mitigation and monitoring measures are expected to lessen the potential impacts to marine mammals (e.g., avoiding pinniped haul-outs). NMFS expects any impacts to pinnipeds to be temporary, Level B behavioral harassment. Marine mammal injury or mortality is unlikely because of the expected sound levels, avoidance of pinniped haul outs, and avoidance of pupping season. The amount of take NMFS authorizes is considered small relative to the estimated stock sizes. Less than two percent of the stock will be harassed for Northern elephant seals, harbor seals, and Steller sea lions; and less than five percent of the stock will be harassed for California sea lions and Northern fur seals. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained in this notice, the proposed IHA notice (77 FR 51773, August 27, 2012), and the IHA application, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS has determined that the USFWS' research trial may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks.

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

There are no relevant subsistence uses of marine mammals implicated by this action.

#### Endangered Species Act (ESA)

The only marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the study area is the eastern DPS of Steller sea lion. On April 18, 2012 (77 FR 23209), NMFS published a proposed rule to delist the eastern DPS. A public comment period was open through June 18, 2012. No final determination has been made. Under section 7 of the ESA, the USFWS consulted NMFS on the bird mitigation research trial. NMFS also consulted internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. A Biological

Opinion was issued in November 2012 and concluded that the USFWS' project is not likely to jeopardize the continued existence of any listed species or adversely modify or destroy critical habitat. The mitigation measures included in the final IHA have also been included in the Incidental Take Statement provided with the Biological Opinion.

### National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals resulting from issuance of a 1-year IHA and the potential issuance of future authorizations for incidental harassment for the ongoing project. NMFS made a finding of no significant impact (FONSI) and the EA and FONSI are available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: November 7, 2012.

**Helen M. Golde,**

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

[FR Doc. 2012–27661 Filed 11–13–12; 8:45 am]

**BILLING CODE 3510–22–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Privacy Act of 1974, as Amended

**AGENCY:** Bureau of Consumer Financial Protection

**ACTION:** Notice of Proposed Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (“CFPB” or the “Bureau”), gives notice of the establishment of a Privacy Act System of Records.

**DATES:** Comments must be received no later than December 14, 2012. The new system of records will be effective December 24, 2012, unless the comments received result in a contrary determination.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Electronic:* [privacy@cfpb.gov](mailto:privacy@cfpb.gov)
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer,

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

#### FOR FURTHER INFORMATION CONTACT:

Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

**SUPPLEMENTARY INFORMATION:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Act”), Public Law No. 111–203, Title X, established the CFPB to administer and enforce federal consumer financial law. The new system of records described in this notice “CFPB.022—Market and Consumer Research Records” will maintain records related to the CFPB’s monitoring of risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services; and to the CFPB’s researching, analyzing, and reporting on consumer financial products or services, consumer awareness and understanding of the costs, risks, and benefits of such products or services, and consumer behavior with respect to such products or services. The CFPB will maintain control over the records covered by this notice.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, “Federal Agency Responsibilities for Maintaining Records About Individuals,” dated November 30, 2000,<sup>1</sup> and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled “CFPB.022—Market and Consumer

<sup>1</sup> Although the CFPB, under 12 U.S.C. 5497(a)(4)(E), is not legally required to follow OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

Research Records” is published in its entirety below.

Dated: November 5, 2012.

**Claire Stapleton,**

*Chief Privacy Officer, Bureau of Consumer Financial Protection.*

### CFPB.022

#### SYSTEM NAME:

Market and Consumer Research Records.

#### SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information in the system will contain records that have been collected from: providers of consumer financial products and services, consumer reporting agencies, and debt counselors; service providers to the above; consumers; government entities; and commercial and non-profit entities that compile or otherwise possess data sets obtained from one or more of the above sources.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may include without limitation: (1) contact information for the categories of individuals mentioned above (e.g., names, phone numbers, email addresses, physical addresses, and governmental-issued identification numbers); (2) information collected from consumers as part of surveys, randomized controlled trials, or through other mechanisms; (3) consumer financial transaction data and other information related to consumers’ financial statuses; (4) information about the legal relationships between consumers and market participants, such as contracts and dispute records; (5) information about commercial relationships between consumers and other market participants; and (6) information on consumer characteristics collected by market participants or other entities.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Sections 1013 and 1022 codified at 12 U.S.C. 5493 and 5512.

#### PURPOSE(S):

Records in this system are collected to enable the CFPB to monitor, research, analyze, and report information relevant to the functioning of markets for consumer financial products and services. This system will also enable CFPB to research, analyze, and report on