PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AAA—Standards of Performance for New Residential Wood Heaters

■ 2. Section 60.532 is amended by revising paragraph (e) to read as follows:

§ 60.532 What standards and associated requirements must I meet and by when?

* * * * *

(e) *Pellet fuel requirements.* Operators of wood heaters that are certified to burn pellet fuels may burn only pellets that have been specified in the owner's manual and graded under a licensing agreement with a third-party organization approved by the EPA (including a certification by the third-party organization that the pellets do not contain, and are not manufactured from, any of the prohibited fuels in paragraph (f) of this section). The Pellet Fuels Institute, ENplus, and CANplus are initially deemed to be approved third-party organizations for this purpose, and additional organizations may apply to the Administrator for approval.

* * * * *

Subpart QQQQ—Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces

■ 3. Section 60.5474 is amended by revising paragraph (e) to read as follows:

§ 60.5474 What standards and requirements must I meet and by when?

* * * * *

(e) *Pellet fuel requirements.* Operators of wood central heaters, including outdoor residential hydronic heaters, indoor residential hydronic heaters, and residential forced-air furnaces, that are certified to burn pellet fuels may burn only pellets that have been specified in the owner's manual and graded under a licensing agreement with a third-party organization approved by the EPA (including a certification by the third-party organization that the pellets do not contain, and are not manufactured from, any of the prohibited fuels in paragraph (f) of this section). The Pellet Fuels Institute, ENplus, and CANplus are initially deemed to be approved third-party organizations for this purpose, and additional organizations may apply to the Administrator for approval.

* * * * *

[FR Doc. 2020–05961 Filed 4–1–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2020–0008; FXMB12610700000–201–FF07M01000]

RIN 1018–BE24

Migratory Bird Subsistence Harvest in Alaska; Region-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing regulations for the subsistence harvest of migratory birds in Alaska for the 2020 season and beyond. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives and are subject to public review. Based on any comments received, we may revise this interim rule. The Alaska subsistence harvest season begins on April 2, 2020.

DATES: This rule is effective April 2, 2020. We will accept comments received or postmarked on or before April 13, 2020.

ADDRESSES: You may submit comments on this interim rule by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2020–0008.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R7–MB–2020–0008; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/1N; Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Cheryl A. Graves, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3887.

SUPPLEMENTARY INFORMATION:

Public Comments

We solicit comments or suggestions from the public. To ensure that any action resulting from this interim rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them.

You must submit your comments and materials concerning this interim rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All comments and materials we receive will be available for public inspection in two ways:

(1) Via *http://www.regulations.gov.* Search for FWS–R7–MB–2020–0008, which is the docket number for this rulemaking.

(2) In-person viewing by appointment, during normal business hours, at the Division of Migratory Bird Management, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1714.

Background

The Migratory Bird Treaty Act of 1918 (MBTA, 16 U.S.C. 703 *et seq.*) was enacted to conserve certain species of migratory birds and gives the Secretary of the Interior the authority to regulate the harvest of these birds. The law further authorizes the Secretary to issue regulations to ensure that the

indigenous inhabitants of the State of Alaska may take migratory birds and collect their eggs for nutritional and other essential needs during seasons established by the Secretary ''so as to provide for the preservation and maintenance of stocks of migratory birds'' (16 U.S.C. 712(1)).

The take of migratory birds for subsistence uses in Alaska occurs during the spring and summer, during which timeframe the sport harvest of migratory birds is not allowed. Regulations governing the subsistence harvest of migratory birds in Alaska are located in title 50 of the Code of Federal Regulations (CFR) in part 92. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds and prescribe regional information on when and where the harvesting of birds in Alaska may occur.

The migratory bird subsistence harvest regulations are developed cooperatively. The Alaska Migratory Bird Co-Management Council consists of the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and representatives of Alaska's Native population. The Council's primary purpose is to develop recommendations pertaining to the subsistence harvest of migratory birds.

Need for Interim Rule

This rulemaking is necessary because the general regulations in 50 CFR part 92 state that the specific regulations pertaining to migratory bird season openings and closures by the Alaska region are subject to public review and approval. The regulations in 50 CFR part 92, subpart D, were last amended April 3, 2019 (84 FR 12946).

The provisions of this interim rule are the current regulations at § 92.31, with a minor administrative change discussed below. Because the public had the opportunity to comment on these regulations in three prior rulemaking actions, the public also had an opportunity to comment on the substance of the current rule. The public comments received on these rulemaking actions were addressed in the final rules:

Proposed Rule	Final Rule
February 10, 2017 (82 FR 10316)	April 4, 2017 (82 FR 16298).
February 1, 2018 (83 FR 4623)	March 30, 2018 (83 FR 13684).
Interim Rule	**Affirmation of Interim Rule**
April 3, 2019 (84 FR 12946)	July 30, 2019 (84 FR 36840).

The provisions proposed for § 92.31 in all of these prior rulemaking actions were the same, with two exceptions: (1) Each year we changed the year referenced in the introductory paragraph to reflect the current year, and (2) in the 2019 rule, we removed an obsolete reference to a hunting season closure for cackling Canada goose at § 92.31(b)(3). (We should have removed this reference in the 2017 rule, but the error was inadvertently retained in the 2017 and 2018 rules.) In this document, the only change we are making to the current regulations in § 92.31 is to remove the reference to ''2019'' in the introductory paragraph.

The retirements of two key Service employees and the inability to fill these positions in a timely manner resulted in unforeseen time constraints on the rulemaking process, thereby preventing publication of a proposed rule for this rulemaking. To respect the subsistence hunt of many rural Alaskans, either for their cultural or religious exercise, sustenance, and/or materials for cultural use (*e.g.,* handicrafts), the Department of the Interior finds that it is in the public interest to publish this interim rule. Without this rule, the subsistence hunting of migratory birds in Alaska during the normal season, which begins on April 2 each year, would be in violation of the MBTA.

The Administrative Procedure Act at 5 U.S.C. 553(b) allows an agency to make a rule effective without a proposed rule for good cause if notice and public procedure are ''contrary to the public interest.'' We find that the delay associated with public comment on a proposed rule to open the Alaska migratory bird subsistence harvest by April 2 is contrary to the public interest, and therefore the ''good cause'' exception under 5 U.S.C. 553(b) applies.

In addition, we have good cause to waive the standard 30-day effective date for this interim rule consistent with 5 U.S.C. 553(d)(3), and this rule will, therefore, take effect on the date specified above in **DATES**. This rule relieves restrictions on Alaskans seeking to conduct subsistence harvest during the season that begins April 2, 2020. Delaying the effective date for 30 days would have detrimental effects on them and on the businesses that support this activity.

While we are taking these steps to ensure Alaskan subsistence hunters do not violate the MBTA, we invite public comment as described above in **DATES** and **ADDRESSES**. After we consider any comments received, we may revise this interim rule.

Future Rulemaking

By removing any reference to a specific year, this rulemaking action will establish general provisions in § 92.31. Consequently, this action establishes ''baseline'' provisions for the region-specific regulations governing the subsistence harvest of migratory birds in Alaska. Our intent is that the regulations at § 92.31 will no longer need to be promulgated annually. Instead, in the future we will issue a proposed rule pertaining to § 92.31 only when we have determined that changes to specific provisions are appropriate and necessary. This change in process, consistent with the MBTA and the 1996 Protocol with Canada amending the 1916 Convention, will allow the Service to conserve resources in years when we expect no changes to § 92.31.

The Co-management Council recommended changes to the subsistence harvest regulations in 2018 and 2019. Therefore, following the conclusion of this rulemaking action, we will publish a proposed rule to seek public comment on revisions to § 92.31 recommended by the Co-management Council. However, in future years, if the Co-management Council does not recommend any changes to the region-specific regulations, then we will not engage in rulemaking pertaining to the Alaska subsistence harvest regulations.

Compliance With the MBTA and the Endangered Species Act

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and endangered and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that: (1) Regulations continue to protect endangered and threatened species; (2) measures to address documented threats are implemented; and (3) the

subsistence community and other conservation partners commit to working together.

Mortality, sickness, and poisoning from lead exposure have been documented in many waterfowl species, including threatened spectacled and Steller's eiders. While lead shot has been banned nationally for waterfowl hunting since 1991, Service staff have documented significant availability of lead shot in waterfowl rounds for sale in communities on the Yukon–Kuskokwim Delta and North Slope. The Service will work with partners to increase our education, outreach, and enforcement efforts to ensure that subsistence waterfowl hunting is conducted using nontoxic shot.

Conservation Under the MBTA

We have monitored subsistence harvest for more than 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. Based on our monitoring of the migratory bird species and populations taken for subsistence, we find that this rule will provide for the preservation and maintenance of migratory bird stocks as required by the MBTA. Communication and coordination between the Service, the Co-management Council, and the Pacific Flyway Council have allowed us to set harvest regulations to ensure the long-term viability of the migratory bird stocks. In addition, Alaska migratory bird subsistence harvest rates have continued to decline since the inception of the subsistence-harvest program, reducing concerns about the program's consistency with the preservation and maintenance of stocks of migratory birds.

Endangered Species Act Consideration

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Neither species is included in the list of subsistence migratory bird species at 50 CFR 92.22; therefore, both species are closed to subsistence harvest. The Service notes that progress is being made with other eider conservation measures, including partnering with the North Slope Migratory Bird Task Force, for increased waterfowl-hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. Moreover, under 50 CFR 92.21 and 92.32, the Service may implement emergency closures, if necessary, to protect Steller's eiders or any other endangered or threatened species or migratory bird population.

Section 7 of the ESA requires the Secretary of the Interior to review other programs administered by the Department of the Interior and utilize such programs in furtherance of the purposes of the ESA. The Secretary is further required to insure that any action authorized, funded, or carried out by the Department of the Interior is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.

The Alaska Division of Migratory Bird Management conducted an intra-agency consultation with the Service's Fairbanks Fish and Wildlife Field Office on this interim rule. The consultation was completed with a biological opinion that concluded the interim rule and conservation measures are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. Therefore, we have determined that this rule complies with the ESA.

Required Determinations

Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because this rule establishes harvest limits related to routine hunting or fishing.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more. It legalizes and regulates a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that will be regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, will not have an impact on prices for consumers.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It will not regulate the marketplace in any way to generate substantial effects on

the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska would be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule will not have significant takings implications. This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this rule on the State of Alaska in the *Unfunded Mandates Reform Act* section, above. We worked with the State of Alaska to develop these regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 12 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we are evaluating possible effects on Federally recognized Indian tribes. The provisions in this interim rule are the same as those set forth in the last 3 years' rulemaking actions, during which we consulted with the tribes. This rulemaking process is collaborative with the Tribes, and we will continue to consult with the Tribes as we revise or affirm the interim rule.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with voluntary annual household surveys used to determine levels of subsistence take and assigned OMB Control Number 1018—0124, (expires August 31, 2022). You may view the information collection requirements at *http://www.reginfo.gov/public/do/PRAMain.* We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

The regulations and options are considered in a February 2020 environmental assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2020 Spring/Summer Harvest.'' Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive order; it allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, a Statement of Energy Effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

§ 92.31 [Amended]

■ 2. Amend § 92.31 introductory text by removing ''2019''.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–07034 Filed 4–1–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 200323–0085]

RIN 0648–BJ37

Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Rocky Intertidal Monitoring Surveys Along the Oregon and California Coasts

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

ACTION: Final rule, notification of issuance.

SUMMARY: NMFS Office of Protected Resources, upon request from the University of California Santa Cruz's Partnership for Interdisciplinary Studies of Coastal Oceans (UCSC/PISCO), hereby issues regulations and a Letter of Authorization to govern the unintentional taking of marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts over the course of five years. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from April 12, 2020 through April 11, 2021.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

NMFS received an application from the UCSC/PISCO requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to visual disturbance of pinnipeds during research activities and use of research equipment. Please see Background below for definitions of harassment. These regulations establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the issuance of a LOA for the take of marine mammals incidental to the UCSC/PISCO's rocky intertidal research activities in Oregon and California.

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 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 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 Regulations

Following is a summary of the major provisions of these regulations regarding UCSC/PISCO's rocky intertidal research activities. These measures include:

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

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, regulations are issued, and notice is provided to the public.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to, in shorthand, as ''mitigation''); and ensure that the 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.

Summary of Request

On August 12, 2019, NMFS received a request from UCSC/PISCO for a proposed rule and LOA to take marine mammals incidental to rocky intertidal monitoring surveys along the Oregon and California coasts. After a series of revisions, the application was deemed adequate and complete on October 8, 2019. UCSC/PISCO's request is for take of a small number of California sea lions (*Zalophus californianus*), Harbor seals (*Phoca vitulina richardii*), Northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*), by Level B harassment only. Neither UCSC/PISCO nor NMFS expects serious injury or mortality, or Level A harassment, to result from this activity. On January 15, 2020 NMFS issued a notice of proposed rulemaking in the **Federal Register** (85 FR 2369) soliciting