

Members of the public are encouraged to submit to the Team non-privileged data and artifacts that are relevant to the subject matter of the NIST investigation described in this notice. Such data and artifacts may be submitted to the address contained in the **ADDRESSES** section of this notice. Confidential information will only be accepted pursuant to an appropriate nondisclosure agreement.

**Authority:** 15 U.S.C. 7301 *et seq.*, 15 CFR part 270.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2021-14392 Filed 7-6-21; 8:45 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB200]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration, Phase II in Monterey County, California

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

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

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a Renewal incidental harassment authorization (IHA) to California Department of Fish and Wildlife (CDFW) to incidentally harass, by Level B harassment only, marine mammals incidental to construction activities associated with the second phase of the Elkhorn Slough Tidal Marsh Restoration Project in Monterey County, California.

**DATES:** This Renewal IHA is valid from the date of issuance through May 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Kim Corcoran, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under->

*marine-mammal-protection-act*. In case of problems accessing these documents, please call the contact listed above.

#### SUPPLEMENTARY INFORMATION:

##### 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 proposed or, if the taking is limited to harassment, a notice of a proposed incidental take 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) 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 such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the “Detailed Description of Specified Activities” section of the initial IHA issuance

notice is planned or (2) the activities as described in the “Detailed Description of Specified Activities” section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the **DATES** section of the initial IHA issuance, provided all of the following conditions are met:

(1) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals).

##### History of Request

On March 13, 2020, NMFS issued an IHA to CDFW to take marine mammals incidental to construction activities associated with the second phase of the tidal marsh restoration project in Elkhorn Slough, California (85 FR 14640; March 13, 2020), effective from June 1, 2020 through May 31, 2021. On May 11, 2021, NMFS received an application for the Renewal of that

initial IHA. As described in the application for Renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-tidal-marsh-restoration-project-elkhorn-slough-phase-ii-2020>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed Renewal incidental harassment authorization was published on June 8, 2021 (86 FR 30412).

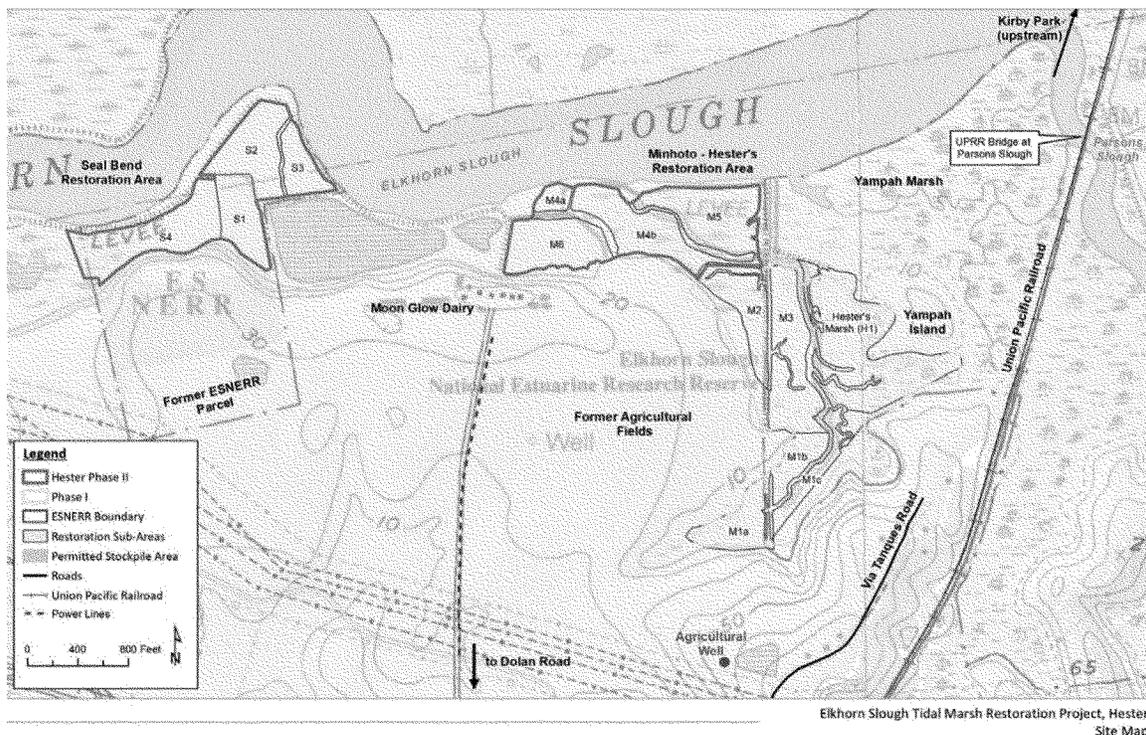
### Description of the Specified Activities and Anticipated Impacts

CDFW is unable to complete all of the planned work under the initial 2020

IHA for Phase II of the Elkhorn Slough Tidal Marsh Restoration Project. The initial IHA planned to restore 58 acres of saltmarsh habitat in two areas, Minhoto-Hester Restoration Area (subareas M4a–b, M5, and M6) and the Seal Bend Restoration Area (S1–S4) (Figure 1). To date, the majority of earthwork at the Minhoto-Hester Restoration Area has been completed, including earthwork in subareas M4a–b and M5, however outstanding work in subareas M5 and M6 was not completed before the May 31, 2021 IHA expiration date. Therefore, CDFW has requested a Renewal IHA to authorize the take of marine mammals for a subset of the initially planned work that has not been completed which will include the outstanding work in subareas M5 and M6. A separate IHA application will be submitted by CDFW for the work at the Seal Bend Restoration Area which has not been initiated to date, and is expected to start later in the year. Of note, the work in the Minhoto-Hester

Restoration Area has taken more days to conduct than initially expected, but the completion of work in that Area is still expected to occur within the total number of workdays contemplated in the initial IHA.

Anticipated impacts would include only Level B harassment of marine mammals (though fewer, since the duration of the proposed activity is shorter). CDFW's request is for one stock of pinniped by Level B harassment: Harbor seal (*Phoca vitulina richardii*). Monitoring results from the 2020 restoration activities indicate that observed exposures above Level B harassment thresholds were well below the amount authorized in associated with the amount of work conducted to date (see monitoring report in renewal request letter). Thus, the subset of Level B harassment take remaining from that authorized under the 2020 IHA will be sufficient to cover the remaining 2021 restoration work at the Minhoto-Hester Restoration Area.



**Figure 1 – Overview of Elkhorn Slough Tidal Marsh Restoration Project**

### Detailed Description of the Activity

A detailed description of the construction activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization. This Renewal is identical to that of the 2020

IHA, in that it is comprised of a subset of the work that was covered in the initial IHA. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The Renewal would be effective until May 31, 2022 and does

not authorize activities related to restoration work in the Seal Bend Restoration Area as a subsequent IHA application will be submitted by CDFW for such activities at a later date.

The mitigation and monitoring will be identical to that of the 2020 IHA. A detailed description of the restoration

activities for which take is proposed may be found in the notices of the proposed (84 FR 72308; December 31, 2019) and the final IHAs (85 FR 14640; March 13, 2020) for the 2020 authorization. All documented associated with the 2020 IHA (*i.e.*, the IHA application, proposed IHA, final IHA, public comments, monitoring reports, etc.) can be found on NMFS’s website, <https://www.fisheries.noaa.gov/action/incidental-take-authorization-tidal-marsh-restoration-project-elkhorn-slough-phase-ii-2020>.

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for take is authorized here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the monitoring data from the

initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the “Description of the Marine Mammals in the Area of Specified Activities” contained in the supporting documents for the initial IHA.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized here may be found in the notices of the proposed and final IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports,

information on relevant Unusual Mortality Events, other scientific literature, and the public comments, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the initial IHA, as do the number of takes, which are indicated below in Table 1.

TABLE 1—CALCULATED TAKE AND PERCENTAGE OF STOCK EXPOSED

Species	Authorized take		Percent population <sup>4</sup>
	Level B	Level A	
Pacific Harbor Seal .....	417 <sup>1</sup> max seals/day (9 percent <sup>2</sup> ) (62 days <sup>3</sup> ) = 2327 .....	0	1.3

<sup>1</sup> Maximum number of seals observed/day between January 2018 and April 2019 by Reserve Otter Monitoring Project.

<sup>2</sup> Percent Take from Phase I.

<sup>3</sup> Number of construction days remaining in Minhoto-Hester Restoration Area.

<sup>4</sup> Data from U.S. Pacific Marine Mammal Stock Assessments: 2015 (Carretta *et al.*, 2015).

All estimates are considered conservative. Construction activities will occur in sections. Noise from construction activities in more southern sections may thus cause fewer disturbances to seals given their distance from seal haul outs (approximately 100 m and greater). There are unlikely to be 417 animals in the project area on any given day. Not all seals that previously used the haul outs within the footprint of the construction are expected use the haul outs just outside the project based on observations from Phase I of the project. Some seals may seek alternative haul out habitat in other parts of Elkhorn Slough.

*Description of Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and in the notice of proposed IHA remains accurate. The following measures are included in this Renewal:

*Timing Restrictions*—All work must be conducted during daylight hours when visual monitoring of marine mammals can be implemented. If environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain), construction must be delayed until the protected species observer (PSO) is confident marine mammals within the shutdown zone could be detected.

*Visual Monitoring*—Required monitoring must be conducted by dedicated, trained, NMFS-approved PSO(s). PSOs shall establish a Level B harassment zone within 300 m of all construction activities. When construction activities occur either, (1) in water or (2); within the boundaries of the two tidal restoration areas, Minhoto-Hester and Seal Bend identified in Figure 1, monitoring must occur every other day when work is occurring.

When construction activities occur near the “borrow” areas where marsh fill material is gathered, monitoring must occur every fifth day when work is occurring, unless the borrow area is more than 300 m from any area where marine mammals have been observed. Occurrence of marine mammals within

the Level B harassment zone must be communicated to the construction lead to prepare for the potential shutdown when required.

*Pre-Construction Clearance and Ramp-Up*—A 30-minute pre-clearance observation period must occur prior to the start of ramp-up and construction activities. CDFW must adhere to the following pre-clearance and ramp-up requirements: (i) Construction activities must not be initiated if any marine mammal is within 10 m of planned operations. If a marine mammal is observed within 10 m of planned operations during the 30-minute pre-clearance period, ramp-up must not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species), (ii) The construction contractor must begin construction activities gradually each day (*e.g.*, ramp up by moving around the project area and starting equipment sequentially).

*Shutdown Requirements*—For heavy machinery work, if a marine mammal comes within 10 m of such operations, operations must cease and vessels shall

reduce speed to the minimum level required to maintain steerage and safe working conditions.

**Pupping Season**—Construction activities may not be initiated: (1) Within 300 m of a mom/pup pair that is hauled out, or (2) within 100 m of a mom/pup pair in the water. If there is a gap in construction activities of more than an hour or if construction moves to a different area, this initiation protocol must again be implemented. During site containment activities that are underway, heavy machinery must not approach closer than 100 m of where mothers and pups are actively hauled out. If a pup less than one week old (neonate) comes within 20 m of where heavy machinery is working, construction activities in that area must be shutdown or delayed until the pup has left the area. In the event that a pup less than one week old remains within those 20 m, NMFS will be consulted to determine the appropriate course of action.

Activities must cease if a marine mammal species for which take was not authorized, or a species for which authorization was granted but the authorized number of takes have been met, is observed by PSOs approaching or within the Level B harassment zone. Activities must not resume until the animal is confirmed to have left the area.

**Construction Activities**—A NMFS approved PSO must conduct biological resources awareness training for construction personnel. The awareness training will be provided to brief construction personnel on identification of marine mammals (including neonates) and the need to avoid and minimize impacts to marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

Construction activities must not be initiated if any marine mammal is within 10 m of planned operations. If a marine mammal is observed within 10 m of planned operations during the 30-minute pre-clearance period, ramp-up must not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species).

Furthermore, the PSO will have the authority to stop project activities if marine mammals approach or enter the Level B Harassment Zone and/or at any time for the safety of any marine mammals. Work will commence only with approval of the PSO to ensure that

no marine mammals are present in the Level B Harassment Zone.

**Ramp Up**—To reduce the risk of potentially startling marine mammals with a sudden intensive sound, the construction contractor must begin construction activities gradually each day by moving around the project area and starting machinery one at a time.

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

### Monitoring and Reporting

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

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

**PSOs**—PSOs shall be used to detect, document, and minimize impacts to marine mammals, as well as, communicate with and instruct relevant construction crew with regard to the presence of marine mammals and mitigation requirements. Independent PSOs (*i.e.*, not construction personnel)

who have no other assigned tasks during monitoring periods must be used. Biological monitoring will begin 30 minutes before work begins and will continue until 30 minutes after work is completed each day.

PSOs will be placed at the best vantage point(s) practicable to monitor for marine mammals within the Level B harassment zone, defined above. If multiple construction activities occur simultaneously, enough PSOs must be on duty to monitor all Level B Harassment zones.

Qualifications for PSOs for visual monitoring include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of harbor seals on land or in the water with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target.
- Successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Experience or training in the field identification of marine mammals, including the identification of behaviors.
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when construction activities were conducted; dates and times when construction activities were suspended to avoid potential incidental injury from construction sound or visual disturbance of marine mammals

observed; and marine mammal behavior.

- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.
- PSOs must be provided with the equipment necessary to effectively monitor for marine mammals in order to record species, the distance from species' location to the construction activities, behaviors, and responses to construction activities.
- The PSO must also conduct biological resources awareness training for construction personnel. The awareness training will be provided to brief construction personnel on identification of marine mammals (including neonates) and the need to avoid and minimize impacts to marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

Monitoring requirements also include:  
**Pre-Activity Monitoring**—Pre and post construction daily censuses—A census of marine mammals in the project area and the area surrounding the project must be conducted 30 minutes prior to the beginning of construction on

monitoring days, and again 30 minutes after the completion of construction activities. The following data will be collected:

- Environmental conditions (weather condition, tidal conditions, visibility, cloud cover, air temperature and wind speed);
- Numbers of each marine mammal species spotted;
- Location of each species spotted, including distance from construction activity;
- Status (in water or hauled out); and
- Behavior.

**Hourly Counts**—Conduct hourly counts of animals hauled out and in the water within, at least, the Level B harassment zone.

- Data collected must include:
- Numbers of each species;
  - Location, including whether inside the Level B harassment zone; whether hauled out or in the water; and distance from construction activities (+/– 10 m);
  - Time;
  - Tidal conditions;
  - Time construction activities start and end;
  - Primary construction activities occurring during the past hour;
  - Any noise or visual disturbance;
  - Number of mom/pup pairs and neonates observed; and

- Notable behaviors, including foraging, grooming, resting, aggression, mating activity, and others.

Notes should include any of the following information to the extent it is feasible to record:

- Age-class;
- Sex;
- Unusual activity or signs of stress; and
- Any other information worth noting.

**Construction Related Reactions**—Record reaction observed in relation to construction activities including:

- Tally of each reaction;
- Time of reaction;
- Concurrent construction activity;
- The assumed cause (whether related to construction activities or not) shall be noted;
- Disturbance must be recorded according to NMFS' three-point pinniped disturbance scale (see Table 2);
- Location of animal during initial reaction and distance from the noted disturbance;
- Activity before and after disturbance; and
- Status (in water or hauled out) before and after disturbance.

TABLE 2—PINNIPED BEHAVIORAL DISTURBANCE CODE REACTIONS

Level	Type of response	Definition
1 .....	Alert .....	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2 .....	Movement .....	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3 .....	Flush .....	All retreats (flushes) to the water.

**Reporting**

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report must include full documentation of methods, results, and interpretation pertaining to all monitoring. It shall also include marine mammal observations pre-activity, during-activity, and post-activity of construction, and shall also provide descriptions of any behavioral responses by marine mammals due to disturbance from construction activities and a complete description of total take

estimate based on the number of marine mammals observed during the course of construction. The report must include an extrapolation of the estimated takes by Level B harassment based on the number of observed disturbances within the Level B harassment zone and the percentage of time the Level B harassment zone was not monitored; *i.e.*, 50 percent of time for the two restoration areas and 80 percent of the time for the borrow and other areas. If comments are received from the NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter following resolution of comments on the draft report from NMFS. If no comments are received from NMFS, the draft report will be

considered to be the final report. This report must contain the informational elements described above.

**Comments and Responses**

A notice of NMFS' proposal to issue a Renewal IHA to CDFW was published in the **Federal Register** on June 8, 2021 (86 FR 30412). That notice either described, or referenced descriptions of, the CDFW's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments.

## Determinations

NMFS has determined that the action under this Renewal includes a subset of activities that are identical to the previous IHA. NMFS found that the previous IHA would have a negligible impact and that authorized take would be small relative to the population size. No changes in marine mammal information, potential effects, estimated take, abundance estimates and the mitigation and monitoring have occurred. Therefore, NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) CDFW's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

## 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 determined that the proposed action qualifies to be categorically excluded from further NEPA review.

## Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it

authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity in the Elkhorn Slough Reserve. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

## Renewal

NMFS has issued a Renewal IHA to CDFW for the take of harbor seals incidental to the continuation of Phase II of the Elkhorn Slough Tidal Marsh Restoration Project in Minhoto-Bay Area located in Monterey County, CA from the date of issuance until May 31, 2021.

Dated: June 30, 2021.

**Angela Somma,**

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

[FR Doc. 2021-14380 Filed 7-6-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB154]

### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

**ACTION:** Notification of fee percentage.

**SUMMARY:** NMFS publishes notification of a 1.09 percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the 2021/2022 crab fishing year fee percentage so they can calculate the required cost recovery fee payment, which must be submitted by July 31, 2022.

**DATES:** The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS by July 31, 2022.

## FOR FURTHER INFORMATION CONTACT:

Abby Jahn, (907) 586-7228.

## SUPPLEMENTARY INFORMATION:

### Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access privilege program authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. The Program is consistent with the cost recovery provisions included under section 304(d)(2)(A) of the Magnuson-Stevens Act. NMFS developed the cost recovery regulations to conform to statutory requirements and to reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. The Program provides that a proportional share of fees charged be forwarded to the State of Alaska for reimbursement of its share of management and data collection costs for the Program.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. Catcher vessel and processor quota shareholders split the cost recovery fees equally with each paying half, while catcher/processor quota shareholders pay the full fee percentage for crab processed at sea. The crab allocations subject to cost recovery include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by