

Comment 9: Differential Pricing Methodology
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF096]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Oregon Department of Transportation's Yaquina Bay Dolphin Replacement Project in Newport, Oregon

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Oregon Department of Transportation (ODOT) for authorization to take marine mammals incidental to construction activities for the Yaquina Bay Dolphin Replacement Project in Newport, Oregon.

DATES: This authorization is effective for 1 year from the date of notification by the IHA-holder, not to exceed 1 year from the date of issuance (September 2, 2025).

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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

MMPA Background and Determinations

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Among the exceptions is section 101(a)(5)(D) of the MMPA (16

U.S.C. 1361 *et seq.*) which directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking by harassment 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 the public has an opportunity to comment on the proposed IHA.

Specifically, NMFS will issue an IHA if it 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”). NMFS must also prescribe requirements pertaining to the monitoring and reporting of such takings. The definitions of key terms, such as “take,” “harassment,” and “negligible impact,” can be found in the MMPA and the NMFS’ implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

On July 22, 2025, a notice of NMFS’ proposal to issue an IHA to ODOT for the take of marine mammals incidental to construction activities for the Yaquina Bay Dolphin Replacement Project in Newport, Oregon was published in the **Federal Register** (90 FR 34441). In that notice, NMFS indicated the estimated numbers, type, and methods of incidental take proposed for each species or stock, as well as the mitigation, monitoring, and reporting measures that would be required should the IHA be issued. The **Federal Register** notice also included analysis to support NMFS’ preliminary conclusions and determinations that the IHA, if issued, would satisfy the requirements of section 101(a)(5)(D) of the MMPA for issuance of the IHA. The **Federal Register** notice included web links to a draft IHA for review, as well as other supporting documents.

No substantive comments were received during the public comment period. With the exception of the minor change described below, there are no changes to the specified activity, the species taken, the proposed numbers, type, or methods of take, or the

mitigation, monitoring, or reporting measures in the proposed IHA notice.

No new information that would change any of the preliminary analyses, conclusions, or determinations in the proposed IHA notice has become available since that notice was published, and therefore, the preliminary analyses, conclusions, and determinations included in the proposed IHA are considered final.

Changes From the Proposed IHA to the Final IHA

We made a single change, which incorporates an updated abundance estimate for the Oregon/Washington coastal stock of harbor seals, which is updated to 22,549 from 24,731 animals based on more recent best available information (Pearson *et al.* 2024). This change does not influence the estimated take numbers under the proposed notice/IHA or influence the preliminary findings made in support of the proposed IHA.

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 review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) 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 issuance of the proposed IHA 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 ensures 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 authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued an IHA to ODOT for authorization to take marine mammals incidental to construction activities for the Yaquina Bay Dolphin Replacement Project in Newport, Oregon.

Dated: September 2, 2025.

Kimberly Damon-Randall,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF100]

Marine Mammals; Pinniped Removal Authority; Approval of Application

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

ACTION: Notice of availability.

SUMMARY: NMFS announces approval of an application to intentionally take, by lethal methods, California sea lions (CSL; *Zalophus californianus*) and Steller sea lions (SSL; *Eumetopias jubatus*: Eastern stock) that are located in the mainstem of the Columbia River between river mile 112 (I-205 bridge) and river mile 292 (McNary Dam), or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead (*Onchorynchus* spp.). This action is intended to reduce or eliminate sea lion predation on species that are listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, and species of lamprey or sturgeon that are not listed as endangered or threatened but are listed as a species of concern by the state of Oregon. This authorization is pursuant to the Marine Mammal Protection Act (MMPA). NMFS also announces availability of decision documents and other information relied upon in making this determination.

ADDRESSES: Additional information about our determination may be obtained by visiting the NMFS West

Coast Region's website: <http://www.westcoast.fisheries.noaa.gov>, or by writing to us at: NMFS West Coast Region, Protected Resources Division, 1201 Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson at the above address, by phone at (503) 231-2226, or by email at robert.c.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 120 (MMPA; 16 U.S.C. 1389, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonid species which have been listed as threatened or endangered species under the ESA, are approaching threatened species or endangered species status (as those terms are defined in that Act), or migrate through the Ballard Locks at Seattle, Washington. Section 120(b)(1) establishes the criteria whereby a state may apply to the Secretary requesting authorization for the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid species. Section 120(b)(2) requires that any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

The Endangered Salmon Predation Prevention Act of 2018 (Pub. L. 115-329) replaced the existing MMPA section 120(f) with a new section 120(f) titled Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries. The new section 120(f) provides separate authority for NMFS to issue permits allowing the intentional lethal taking of sea lions for the purpose of protecting ESA-listed fish species and species of lamprey and sturgeon that are listed as species of concern. Under section 120(f), sea lions are deemed to be individually identifiable and having a significant negative impact on the protected fish species when the sea lions are located in defined areas of the Columbia River and its tributaries. These areas include the mainstem of the Columbia River between river mile 112 (I-205 bridge) and river mile 292 (McNary Dam), and in any tributary to the Columbia River that includes spawning habitat of

threatened or endangered salmon or steelhead (*Onchorynchus* spp.). Public Law 115-329 also included additional eligible entities¹ not identified in section 120(b)(1) that may apply for authorization to intentionally take, by lethal methods, sea lions present within the geographic area established in section 120(f).

Pursuant to section 120(f) of the MMPA, an eligible entity may request authorization to lethally remove sea lions, and the Regional Administrator is required to: (1) review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to address the situation described in the application; (2) publish a notice in the **Federal Register** requesting public comment on the application, if sufficient evidence has been produced; (3) establish and convene a Task Force; (4) consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and (5) if approved, immediately take steps to implement the intentional lethal taking, which shall be performed by agencies or qualified individuals under contract to such agencies (section 120(c)(4)), or by individuals employed by the eligible entities described in section 120(f)(6).

Section 120(c)(2) requires the Task Force be composed of the following: (1) employees of the Department of Commerce; (2) scientists who are knowledgeable about the pinniped interaction; (3) representatives of affected conservation and fishing community organizations; (4) Indian Treaty tribes; (5) the states; and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the application and public comments and, as required by section 120, recommends to NMFS whether to approve or deny the application. The Task Force is also required to submit with its recommendations for the proposed location, time, and method of such taking; criteria for evaluating the success of the action; the duration of the intentional lethal taking authority; and a suggestion for non-lethal alternatives, if available and practicable, including a recommended course of action.

Section 120(f)(2)(C) requires the Secretary to establish procedures to coordinate issuance of permits (authorizations) under this subsection,

¹ The Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation; and the Willamette Committee as defined in section 120(f)(6)(D) of the MMPA.