

mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) Researchers must observe a site from a distance for at least five minutes, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.*, site surveys will not be conducted if other species of pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals).

(2) Researchers must avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers must keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to approach a marine mammal in order to continue conducting research (*i.e.*, if a site cannot be accessed or sampled due to the presence of pinnipeds).

(3) Researchers must avoid making loud noises (*i.e.*, using hushed voices) and keep bodies low to the ground in the visual presence of pinnipeds.

(4) Researchers must monitor the off-shore area for predators (such as killer whales and white sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters.

(5) Researchers must promptly vacate sites at the conclusion of sampling.

(b) *Pup protection measure.* Intentional approach must not occur if de-

pendent pups are present to avoid mother/pup separation and trampling of pups. Staff shall reschedule work at sites where pups are present, unless other means of accomplishing the work can be done without causing disturbance to mothers and dependent pups.

§ 217.105 Requirements for monitoring and reporting.

(a) *Visual monitoring program.* (1) Standard information recorded must include species counts (with numbers of pups/juveniles when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event.

(2) UCSC/PISCO must note observations of:

(i) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel;

(ii) Tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and

(iii) Rare or unusual species of marine mammals for agency follow-up.

(3) For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 1 to this paragraph (a)(3). Only observations of disturbance Levels 2 and 3 should be recorded as takes.

TABLE 1 TO PARAGRAPH (a)(3)—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

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.

(4) Information regarding physical and biological conditions pertaining to a site, as well as the date and time that research was conducted are also noted.

(b) *Prohibited take.* (1) If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this subpart or

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LOA, such as an injury (Level A harassment), serious injury, or mortality, UCSC/PISCO shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

- (i) Time and date of the incident;
- (ii) Description of the incident;
- (iii) Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (iv) Description of all marine mammal observations in the 24 hours preceding the incident;
- (v) Species identification or description of the animal(s) involved;
- (vi) Fate of the animal(s); and
- (vii) Photographs or video footage of the animal(s) (if equipment is available).

(2) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with UCSC/PISCO to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. UCSC/PISCO may not resume the activities until notified by NMFS via letter, email, or telephone.

(c) *Notification of dead or injured marine mammals.* (1) In the event that UCSC/PISCO discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.*, in less than a moderate state of decomposition), UCSC/PISCO shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (b)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with UCSC/PISCO to determine whether additional mitigation measures or modifications to the activities are appropriate.

(2) In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in this sub-

part and LOA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UCSC/PISCO shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. UCSC/PISCO shall provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

(d) *Annual report.* (1) A draft annual report shall be submitted to NMFS Office of Protected Resources within 90 days after the conclusion of each annual field season. The final annual report after year five may be included as part of the final report (see paragraph (e) of this section). The report must include a summary of the information gathered pursuant to the monitoring requirements set forth in paragraph (a) of this section and in the LOA.

(2) A final annual report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

(e) *Final report.* A draft final report shall be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report shall be submitted to the Director of the NMFS Office of Protected Resources and to the NMFS West Coast Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

§ 217.106 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, UCSC/PISCO must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of this subpart.