

Atmospheric Administration (NOAA),  
Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The ONMS is seeking applications for the following vacant seats on the Gray's Reef National Marine Sanctuary Advisory Council: Sport diving and charter/commercial fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

**DATES:** Applications are due by March 30, 2012.

**ADDRESSES:** Application kits may be obtained from Becky Shortland, Council Coordinator ([becky.shortland@noaa.gov](mailto:becky.shortland@noaa.gov), 10 Ocean Science Circle, Savannah, GA 31411; 912-598-2381). Completed applications should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Becky Shortland, Council Coordinator ([becky.shortland@noaa.gov](mailto:becky.shortland@noaa.gov), 10 Ocean Science Circle, Savannah, GA 31411; 912-598-2381).

**SUPPLEMENTARY INFORMATION:** The sanctuary advisory council was established in August 1999 to provide advice and recommendations on management and protection of the sanctuary. The advisory council, through its members, also serves as liaison to the community regarding sanctuary issues and represents community interests, concerns, and management needs to the sanctuary and NOAA.

**Authority:** 16 U.S.C. Sections 1431, et seq. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA941

#### Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance at Northwest Seal Rock, Del Norte County, CA

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

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

**SUMMARY:** In accordance with the 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 St. George Reef Lighthouse Preservation Society (SGRLPS) to take marine mammals, by Level B harassment only, incidental to conducting aircraft operations, and lighthouse renovation and light maintenance activities on the St. George Reef Light Station on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean, from the period of February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012.

**DATES:** This authorization is effective from February 10, 2012, through April 30, 2012, and during the period of November 1, 2012, through December 31, 2012.

**ADDRESSES:** A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The following associated documents are also available at the same internet address: Environmental Assessment (EA) prepared by NMFS; and the finding of no significant impact (FONSI). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

#### FOR FURTHER INFORMATION CONTACT:

Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 427-8401 or Monica DeAngelis, NMFS Southwest Regional Office, (562) 980-3232.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals 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 subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. 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."

Section 101(a)(5)(D) of the MMPA establishes an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA 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 small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization. NMFS must publish a notice in the **Federal Register** within 30 days of its determination to 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

NMFS received an application on October 7, 2011, from the SGRLPS for the taking by harassment, of marine mammals, incidental to conducting aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station). NMFS determined that application complete and adequate on October 21, 2011. NMFS made the complete application available for public comment (see **ADDRESSES**) for this IHA.

The SGRLPS aims to: (1) Restore and preserve the Station on a monthly basis (November 1 through April 30, annually); and (2) perform periodic, annual maintenance on the Station's optical light system. The Station, which is listed in the National Park Service's National Register of Historic Places, is located on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean.

The specified activities would occur in the vicinity of a possible pinniped haul out site located on NWSR. Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (e.g., painting, plastering, welding, and glazing); (3) maintenance activities (e.g., bulb replacement and automation of the light system); and (4) human presence, may have the potential to cause any pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the SGRLPS has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals (*Callorhinus ursinus*) by Level B harassment.

To date, NMFS has issued two, 1-year IHAs to the SGRLPS for the conduct of the same activities from 2009 to 2011. This will be the SGRLPS' third IHA.

### Description of the Specified Activity

SGRLPS would conduct the activities (aircraft operations, lighthouse restoration, and light maintenance activities) between February 10, 2012, through April 30, 2012, and during the period of November 1, 2012, through December 31, 2012, at a maximum frequency of one session per month. The duration for each session would last no more than three days (e.g., Friday, Saturday, and Sunday).

#### *Aircraft Operations*

Because NWSR has no safe landing area for boats, the restoration activities would require the SGRLPS to transport personnel and equipment from the California mainland to NWSR by a small helicopter. SGRLPS would transport no more than 15 work crew members and equipment to NWSR for each session and estimates that each session would require no more than 36 helicopter landings/takeoffs per month.

#### *Lighthouse Restoration Activities*

Restoration activities would include the removal of peeling paint and plaster, restoration of interior plaster and paint, refurbishing structural and decorative metal, reworking original metal support beams throughout the lantern room and elsewhere, replacing glass as necessary, and upgrading the present electrical system. The SGRLPS expects to complete most of the major restoration work within five years.

#### *Light Maintenance Activities*

The SGRLPS will need to conduct maintenance on the Station's beacon light at least once or up to two times per year within the work window. Scheduled light maintenance activities would coincide with lighthouse restoration activities conducted monthly during the period of February through April, 2012 and during the period of November through December, 2012. The SGRLPS expects that maintenance activities would not exceed three hours per each monthly session.

#### **Emergency Light Maintenance**

If the beacon light fails during the period from February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012, the SGRLPS would send a crew of two to three people to the Station by helicopter to repair the beacon light. For each emergency repair event, the SGRLPS would conduct a maximum of four flights (two arrivals and two departures) to transport equipment and supplies. The helicopter may remain on site or transit back to

shore and make a second landing to pick up the repair personnel.

In the case of an emergency repair between May 1, 2012, and October 31, 2012, the SGRLPS would consult with the NMFS Southwest Regional Office (SWRO) to best determine the timing of the trips to the lighthouse, on a case-by-case basis, based upon the existing environmental conditions and the abundance and distribution of any marine mammals present on NWSR. The SWRO biologists would have real-time knowledge regarding the animal use and abundance of the NWSR at the time of the repair request and would make a decision regarding when the trips to the lighthouse can be made during the emergency repair time window that would have the least practicable adverse impact to marine mammals. The SWRO would also ensure that the SGRLPS' request for incidental take during emergency repairs would not exceed the number of incidental take authorized in the IHA.

NMFS has outlined the purpose of the program in a previous notice for the proposed IHA (76 FR 79157, December 21, 2011). The planned activities have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including aircraft and acoustic source specifications, the reader should refer to the notice for the proposed IHA (76 FR 79157, December 21, 2011).

### Comments and Responses

NMFS published a notice of receipt of the SGRLPS' application and proposed IHA in the **Federal Register** on December 21, 2011 (76 FR 79157). During the 30-day comment period, NMFS received comments from the Marine Mammal Commission (Commission) only. The Commission recommended that NMFS issue the requested authorization, provided that the required monitoring and mitigation measures are carried out (e.g., restrictions on the timing and frequency of activities, restrictions on helicopter approaches, timing measures for helicopter landings, and measures to minimize acoustic and visual disturbances) as described in NMFS' December 21, 2011 (76 FR 79157) notice of the proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included within the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

### Description of the Specified Geographic Region

The Station is located on a small, rocky islet (41°50'24" N, 124°22'06" W) approximately nine kilometers (km) (6.0 miles (mi)) in the northeast Pacific Ocean, offshore of Crescent City, California (Latitude: 41°46'48" N; Longitude: 124°14'11" W).

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

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific harbor seal, the eastern Distinct Population Segment (DPS) of Steller sea lion, and the eastern Pacific stock of northern fur seal. California sea lions and Pacific harbor seals are not listed as threatened or endangered under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), nor are they categorized as depleted under the MMPA. Northern fur seals are not listed as threatened or endangered under the ESA. However, they are categorized as depleted under the MMPA. Last, the eastern DPS of Steller sea lion, is listed as threatened under the ESA and is categorized as depleted under the MMPA.

NMFS has presented a more detailed discussion of the status of these stocks and their occurrence in the northwestern Pacific Ocean, as well as other marine mammal species that may occur around NWSR in the notice for the proposed IHA (76 FR 79157, December 21, 2011).

### Potential Effects of the Activity on Marine Mammals

Acoustic and visual stimuli generated by: (1) Helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.*, painting, plastering, welding, and glazing); and (3) maintenance activities (*e.g.*, bulb replacement and automation of the light system) may have the potential to cause Level B harassment of any pinnipeds hauled out on NWSR. The effects of sounds from helicopter operations and/or restoration and maintenance activities might include one of the following: temporary or permanent hearing impairment or behavioral disturbance (Southall, *et al.*, 2007).

There is a dearth of information on acoustic effects of helicopter overflights on pinniped hearing and communication (Richardson *et al.*, 1995) and to NMFS' knowledge, there has been no specific documentation of temporary or permanent hearing impairment in free-ranging pinnipeds

exposed to helicopter operations during realistic field conditions. Any noise attributed to the SGRLPS' helicopter operations on NWSR would be short-term (approximately five minutes per trip) and NMFS would expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. NMFS does not expect that the increased received levels of sound from the helicopter would cause temporary or permanent hearing impairment because the pinnipeds would flush before the helicopter approached NWSR; thus increasing the distance between the pinnipeds and the received sound levels on NWSR during the specified activities.

Some behavioral disturbance is expected; however NMFS expects the disturbance to be localized and short-term. If pinnipeds are present on NWSR, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from NWSR due to the pinnipeds temporarily moving from the rocks and lower structure of NWSR into the sea due to the noise and appearance of helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on the island will depart the rock and move into the water upon the initial helicopter approach.

The notice of the proposed IHA (76 FR 79157, December 21, 2011) provided a discussion of: (1) The sound levels produced by the helicopter; (2) behavioral reactions of pinnipeds to helicopter operations and light construction noise; (3) hearing impairment and other non-auditory physical effects; (4) behavioral reactions to visual stimuli; (5) and specific observations gathered during previous monitoring of the marine mammals present on NWSR. NMFS refers readers to the reader to the SGRLPS' application and NMFS' EA for additional information on the behavioral reactions (or lack thereof) by pinnipeds to aircraft overflights.

### Mortality

Sudden movement of large numbers of animals may cause a stampede. In order to prevent such stampedes from occurring within the sea lion colony, NMFS would require certain mitigation requirements and restrictions, such as controlled helicopter approaches and limited access period during the pupping season. As such, and because any pinnipeds nearby likely would avoid the approaching helicopter, NMFS anticipates that there will be no

instances of injury or mortality during the project.

### Anticipated Effects on Marine Mammal Habitat

The NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on NWSR. NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 79157, December 21, 2011). The SGRLPS proposes to confine all restoration activities to the existing structure which would occur on the upper levels of the Station which are not used by marine mammals. The SGRLPS would remove all waste, discarded materials and equipment from the island after each visit. The activities will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

### Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

The SGRLPS has based the mitigation measures described herein, to be implemented for the helicopter operations and restoration activities, on the following: (1) Protocols used during the 2010 IHA for helicopter operations and restoration activities as approved by NMFS; (2) recommended best practices in Richardson *et al.* (1995); and (3) reasonable and prudent measures implemented by the terms and conditions of the section 7 ESA Biological Opinion's (BiOp) Incidental Take Statement (ITS).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities, the SGRLPS and/or its designees will implement the following mitigation measures for marine mammals:

- (1) Limit the time and frequency of the restoration activities;
- (2) Employ helicopter approach and timing techniques; and
- (3) Avoidance of visual and acoustic contact with marine mammals by the SGRLPS and/or its designees.

*Time and Frequency:* Lighthouse restoration activities are to be conducted at maximum of once per month between February 10, 2012, through April 30, 2012, or between November 1, 2012, through December 31, 2012. Each restoration session will last no more than three days. Maintenance of the light beacon will occur only in conjunction with restoration activities.

*Helicopter Approach and Timing Techniques:* The SGRLPS shall ensure that helicopter approach patterns to the lighthouse will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach NWSR when the tide is too high for the marine mammals to haulout on NWSR.

Since the most severe impacts (stampede) are precipitated by rapid and direct helicopter approaches, initial approach to the Station must be offshore from the island at a relatively high altitude (e.g., 800–1,000 ft, or 244–305 m). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (e.g., wind condition) such helicopter approach and timing techniques cannot be achieved, the SGRLPS must abort the restoration and maintenance activities for that day.

*Avoidance of Visual and Acoustic Contact with Marine Mammals:* The SGRLPS members and restoration crews shall be instructed to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the lighthouse. Although no impacts from these activities were seen during the 2001 CCR study, it is relatively simple to avoid this potential impact. The door to the lower platform (which is used at times by pinnipeds) shall remain closed and barricaded to all tourists and other personnel.

### Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation 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.

Based on our evaluation of the applicant's mitigation measures, NMFS has determined that these measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### Monitoring

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

At least once during the period between February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012 a qualified biologist shall be present during all three workdays at the Station. The biologist hired will be subject to approval of NMFS and this requirement may be modified depending on the results of the monitoring report from the 2011 season.

The qualified biologist shall document use of the island by the pinnipeds, frequency, (i.e., dates, time, tidal height, species, numbers present, and any disturbances), and note any responses to potential disturbances. In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup, the SGRLPS will notify the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources immediately.

Aerial photographic surveys may provide the most accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. Aerial photo coverage of the island shall be completed from the same helicopter used to transport the SGRLPS personnel to the island during restoration trips. A skilled photographer shall take photographs of all marine mammals hauled out on the island at an altitude greater than 300 m (984 ft), prior to the first landing on each visit included in the monitoring program.

Photographic documentation of marine mammals present at the end of each three-day work session shall also be made for a before and after comparison. The SGRLPS will forward these photographs to a biologist capable of discerning marine mammal species. Data shall be provided to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The original photographs can be made available to NMFS or other marine mammal experts for inspection and further analysis.

### Reporting

The SGRLPS personnel will record data to document the number of marine mammals exposed to helicopter noise and to document apparent disturbance reactions or lack thereof. SGRLPS and NMFS will use the data to estimate numbers of animals potentially taken by Level B harassment.

### Interim Monitoring Report

The SGRLPS will submit interim monitoring reports to the NMFS SWRO Administrator and the NMFS Director of Office of Protected Resources no later than 30 days after the conclusion of each monthly session. The interim report will describe the operations that were conducted and sightings of marine mammals near the project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring.

Each interim report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

### Final Monitoring Report

In addition to the interim reports, the SGRLPS will submit a draft Final Monitoring Report to NMFS no later than 90 days after the project is completed to the Regional Administrator and the Director of Office

of Protected Resources at NMFS Headquarters. Within 30 days after receiving comments from NMFS on the draft Final Monitoring Report, the SGRLPS must submit a Final Monitoring Report to the Regional Administrator and the NMFS Director of Office of Protected Resources. If the SGRLPS receives no comments from NMFS on the draft Final Monitoring Report, the draft Final Monitoring Report will be considered to be the Final Monitoring Report.

The final report will provide:

(i) A summary and table of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities.

(ii) Species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to acoustic stimuli associated with the helicopter operations, restoration and maintenance activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., stampede), the SGRLPS shall immediately cease the specified activities and 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 [ITP.Cody@noaa.gov](mailto:ITP.Cody@noaa.gov) and to 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;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- 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 SGRLPS to determine what is necessary to minimize the likelihood of

further prohibited take and ensure MMPA compliance. The SGRLPS may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the SGRLPS discovers an injured or dead marine mammal, and the biologist (if present) 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 SGRLPS 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 [ITP.Cody@noaa.gov](mailto:ITP.Cody@noaa.gov) and to the Southwest Regional Stranding Coordinator at (562) 980-3230 ([Sarah.Wilkin@noaa.gov](mailto:Sarah.Wilkin@noaa.gov)). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the SGRLPS to determine whether modifications in the activities are appropriate.

In the event that the SGRLPS discovers an injured or dead marine mammal, and the lead biologist (if present) 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 SGRLPS 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 [ITP.Cody@noaa.gov](mailto:ITP.Cody@noaa.gov) and to 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 SGRLPS 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]."

Only take by Level B harassment is anticipated and authorized as a result of the helicopter operations and restoration and maintenance activities on NWSR.

Based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), NMFS estimates that approximately 204 California sea lions (calculated by multiplying the average monthly abundance of California sea lions (zero in April, 1997 and 34 in April, 1998) present on NWSR by 6 months of the restoration and maintenance activities), 172 Steller sea lions (NMFS' estimate of the maximum number of Steller sea lions that could be present on NWSR with a 95-percent confidence interval), 36 Pacific harbor seals (calculated by multiplying the maximum number of harbor seals present on NWSR (6) by 6 months), and 6 northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 6 months) could be potentially affected by Level B behavioral harassment over the course of the IHA. Estimates of the numbers of marine mammals that might be affected are based on consideration of the number of marine mammals that could be disturbed appreciably by approximately 51 hrs of aircraft operations during the course of the activity. These incidental harassment take numbers represent approximately 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area, no injury or mortality to pinnipeds is expected nor requested.

#### **Negligible Impact and Small Numbers Analysis and Determination**

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:

- (1) The number of anticipated injuries, serious injuries, or mortalities;
- (2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (*i.e.*, impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/ contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

For reasons stated previously in this document and in the notice of the proposed IHA (76 FR 79157, December 21, 2011), the specified activities associated with the SGRLPS' helicopter operations and restoration/maintenance activities are not likely to cause PTS, or other non-auditory injury, serious injury, or death because:

(1) The likelihood that, given sufficient notice through relatively slow helicopter approaches, NMFS expects marine mammals to gradually move away from a noise source that is annoying prior to its becoming potentially injurious; and

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the incorporation of the required monitoring and mitigation measures.

As mentioned previously, NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No takes by Level A harassment, serious injury, or mortality are anticipated to occur as a result of the SGRLPS' specified activities, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the activities; the availability of alternate areas near NWSR for marine mammals to avoid the resultant acoustic disturbance; and limited access to NWSR during the pupping season. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the

SGRLPS' planned helicopter operations and restoration/maintenance activities, would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the helicopter operations and restoration/maintenance activities 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 Steller sea lion, eastern Distinct Population Segment is listed as threatened under the ESA and occurs in the action area. NMFS Headquarters' Office of Protected Resources, Permits and Conservation Division conducted a formal section 7 consultation under the ESA with the Southwest Region, NMFS. On January 27, 2010, the Southwest Region issued a Biological Opinion (BiOp) and concluded that the issuance of IHAs are likely to adversely affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has designated critical habitat for the eastern DPS of Steller sea lions in California at Año Nuevo Island, Southeast Farallon Island, Sugarloaf Island and Cape Mendocino, California pursuant to section 4 of the ESA (see 50 CFR 226.202(b)). Northwest Seal Rock is neither within nor nearby these designated areas. Finally, the BiOp included an ITS for Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take. NMFS has reviewed the 2010 BiOp and determined that there is no new information regarding effects to Steller sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the ITS. Therefore, the IHA did not require reinitiation of a Section 7 consultation.

#### **National Environmental Policy Act (NEPA)**

To meet NMFS' NEPA requirements for the issuance of an IHA to the SGRLPS, NMFS prepared an Environmental Assessment (EA) in 2010 that was specific to conducting aircraft operations and restoration and maintenance work on the St. George

Reef Light Station. The EA, titled "Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California," evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. At that time, NMFS concluded that issuance of an IHA November 1 through April 30, annually would not significantly affect the quality of the human environment and issued a Finding of No Significant Impact (FONSI) for the 2010 EA regarding the SGRLPS' activities. In conjunction with the SGRLPS' 2012 application, NMFS has again reviewed the 2010 EA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the IHA requiring evaluation in a supplemental EA and NMFS, therefore, reaffirms the 2010 FONSI. An electronic copy of the EA and the FONSI for this activity is available upon request (see ADDRESSES).

#### **Determinations**

NMFS has determined that the impact of conducting the specific helicopter operations and restoration activities described in this notice and in the IHA request in the specific geographic region in the northwestern Pacific Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

#### **Authorization**

As a result of these determinations, NMFS has issued an IHA to the SGRLPS to conduct helicopter operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean from the period of February 10, 2012, through April 30, 2012, or during the period of November 1, 2012, through December 31, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Dated: February 10, 2012.

**James H. Lecky,**

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

[FR Doc. 2012-3542 Filed 2-14-12; 8:45 am]

**BILLING CODE 3510-22-P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities; Proposed Collection, Comment Request

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) seeks public comment on the collection of certain information by the Commission under section 745 of the Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”). The Paperwork Reduction Act (“PRA”) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. Section 745 requires the Commission to seek public comment for not less than 30 days with respect to certain industry filings. This notice solicits comments on the provisions of the Commission’s final rulemaking on “Provisions Common to Registered Entities” under which the Commission would collect comments on the industry filings by publication of documents related to the filings and a request for comments on the Commission’s public Web site.<sup>1</sup>

**DATES:** Comments must be submitted on or before April 2, 2012.

**ADDRESSES:** You may submit comments, identified by “Part 40 Notice and Comment Collection,” by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

- *Hand delivery/Courier:* Same as Mail above.

- *Federal eRulemaking Portal:* <http://www.regulations.gov/search/index.jsp>. Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an

English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission’s regulations.<sup>2</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from [www.cftc.gov](http://www.cftc.gov) that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

#### FOR FURTHER INFORMATION OR A COPY

**CONTACT:** Bella Rozenberg, Assistant Deputy Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418-5119 [brozenberg@cftc.gov](mailto:brozenberg@cftc.gov) or Mathew T. Hargrow, Attorney, Office of the General Counsel, (202) 418-5267, [mhargrow@cftc.gov](mailto:mhargrow@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they collect or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) as “the obtaining, causing to be obtained, soliciting \* \* \* facts or opinions by or for any agency, regardless of form or format [from] ten or more persons.” An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. Under OMB regulations, which implement provisions of the PRA, certain “facts or opinions that are submitted in response to a general solicitation of comments from the public, published in the **Federal Register** or other publications,” 5 CFR

1320.3(h)(4), or “facts or opinions obtained or solicited at or in connection with public hearings or meetings,” 5 CFR 1320.3(h)(8), are excluded from the OMB approval process.

In the Commission’s final rulemaking on provisions common to registered entities,<sup>3</sup> the Commission seeks to implement section 745 of the Dodd-Frank Act,<sup>4</sup> which amends Section 5c of the Commodity Exchange Act (CEA)<sup>5</sup> to enhance compliance by registered entities. This section permits a registered entity to elect to list for trading or accept for clearing any new contract or other instrument, or elect to approve and implement any new rule or rule amendment by providing to the Commission a written certification that the new contract, instrument, rule, or rule amendment complies with the CEA. Such rules or rule amendments become effective after ten (10) business days, unless the Commission notifies the registered entity that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the CEA. Pursuant to section 745 and the final amendments to part 40 of the Commission’s regulations,<sup>6</sup> the Commission will provide a not less than a 30-day comment period when it determines that the rule or rule amendment will be stayed. Pursuant to the final rules, the Commission will provide notice of the stay and the request for comment on its Web site, as well as specify the manner in which the public may submit comments.<sup>7</sup>

The Commission initially estimated that approximately 45 entities would be affected by the rule certification procedures.<sup>8</sup> The initial estimate determined that these 45 entities would each have approximately 120 responses per year for a total of 5,400 responses.<sup>9</sup> The Commission has amended these numbers in the final rule such that the estimated number of respondents is increased to 70 entities, the average annual responses by each respondent is decreased to 100. These numbers are based upon comments received regarding the proposed rules as well as changes made by the Commission to streamline the product certification process for certain swap contracts. The Commission anticipates that the

<sup>3</sup> 75 FR 67282, Nov. 2, 2010.

<sup>4</sup> Public Law 111-203, 124 Stat. 1376 (2010).

<sup>5</sup> 7 U.S.C. 7a.

<sup>6</sup> 75 FR 67282, 67296 (Nov. 2, 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 67290.

<sup>9</sup> *Id.*

<sup>2</sup> Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). Commission regulations are accessible on the Commission’s Web site, [www.cftc.gov](http://www.cftc.gov).

<sup>1</sup> 76 FR 44776, July 27, 2011.