

**DATES AND TIME:** The North Carolina Coastal Management Program evaluation site visit will be held September 12–16, 2011. One public meeting will be held during the week. The public meeting will be held on Wednesday, September 14th, 2011, at 6:30 p.m. local time at the NOAA Beaufort Laboratory, NOAA/NCNERR Administration Building (Building 1), 101 Pivers Island Road, Beaufort, North Carolina.

The Delaware Coastal Management Program evaluation site visit will be held September 19–23, 2011. One public meeting will be held during the week. The public meeting will be held on Monday, September 19, 2011, at 6 p.m. local time at the Delaware Reserve, 818 Kitts Hummock Road, Dover, Delaware.

The Delaware National Estuarine Research Reserve evaluation site visit will be held September 19–23, 2011. One public meeting will be held during the week. The public meeting will be held on Monday, September 19, 2011, at 6 p.m. local time at the Delaware Reserve, 818 Kitts Hummock Road, Dover, Delaware.

**ADDRESSES:** Copies of the states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding these programs are encouraged and will be accepted until 15 days after the public meeting held for the program. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or [Kate.Barba@noaa.gov](mailto:Kate.Barba@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the availability of the final evaluation findings for the North Inlet/Winyah Bay (South Carolina) National Estuarine Research Reserve (NERR). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs. The North Inlet/Winyah Bay NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA,

1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or [Kate.Barba@noaa.gov](mailto:Kate.Barba@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182, or [Kate.Barba@noaa.gov](mailto:Kate.Barba@noaa.gov).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: July 19, 2011.

**Donna Wieting,**

*Director, Office of Ocean and Coastal Resource Management National Ocean Service National Oceanic and Atmospheric Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA534**

#### **Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California, 2011–2012**

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

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

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to PRBO Conservation Science (PRBO), to take marine mammals, by Level B harassment, incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California.

**DATES:** Effective July 29, 2011, through July 28, 2012.

**ADDRESSES:** A copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained 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, telephoning the contact listed

below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, Office of Protected Resources, NMFS (301) 427–8401.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371(a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, 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, if the taking is limited to harassment, 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 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 established 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 January 10, 2011, from PRBO requesting the taking, by Level B harassment, of small numbers of marine mammals, incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California (CA) for one year. PRBO, along with partners Oikonus Ecosystem Knowledge and Point Reyes National Seashore, plan to conduct the research activities for one year. NMFS reviewed PRBO's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, PRBO modified its application and submitted a revised application on February 23, 2011. NMFS determined that application complete and adequate on April 18, 2011.

PRBO's research activities involve monitoring and censusing seabird colonies; observing seabird nesting habitat; restoring nesting burrows; observing breeding elephant seals, and resupplying a field station. The activities would occur in the vicinity of pinniped haul out sites located on Southeast Farallon Island (37°41'54.32" N, 123° 0'8.33" W), Año Nuevo Island (37° 6'29.25" N, 122°20'12.20" W), or within Point Reyes National Seashore (37°59'38.61" N, 122°58'24.90" W) in Central CA.

Acoustic and visual stimuli generated by: (1) Noise generated by motorboat approaches and departures; (2) noise generated during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities, may have the potential to cause California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore to flush into the surrounding water or to cause a short-term behavioral disturbance for

marine mammals in the areas. These types of disturbances are the principal means of marine mammal taking associated with these activities and PRBO has requested an authorization to take 5,104 California sea lions, 526 harbor seals, 190 northern elephant seals, and 20 Steller sea lions by Level B harassment only.

### Description of the Specified Geographic Region

The action area consists of the following three locations in the northeast Pacific Ocean:

#### South Farallon Islands

The South Farallon Islands (SFI) consist of Southeast Farallon Island (SEFI) located at 37°41'54.32" N, 123°0'8.33" W and West End Island (WEI). These two islands are directly adjacent to each other and separated by only a 30-foot (ft) (9.1 meter (m)) channel. The SFI have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary (NMS).

#### Año Nuevo Island

Año Nuevo Island (ANI) located at 37° 6'29.25" N, 122°20'12.20" W is one-quarter mile (402 m) offshore of Año Nuevo Point in San Mateo County, CA. This small 25-acre (0.1 square km) island is part of the Año Nuevo State Reserve, all of which is owned and operated by California State Parks. ANI lies within the Monterey Bay NMS and the newly established Año Nuevo State Marine Conservation Area.

#### Point Reyes National Seashore

Point Reyes National Seashore (PRNS) is located approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones NMS. The research areas (Life Boat Station, Drakes Beach, and Point Bonita) are within the headland coastal areas of the national park.

### Description of the Specified Activity

PRBO will conduct seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore from July 29, 2011 through July 28, 2012. To date, NMFS has issued three, 1-year IHAs to PRBO for the conduct of the same activities from 2007 to 2011, with the last expiring on Feb. 18, 2011.

#### Seabird Research on Southeast Farallon Island

PRBO proposes to conduct: (1) Daily observations of seabird colonies at a maximum frequency of three 15-minute (min) visits per day; and (2) conduct daily observations of breeding common murre (*Uria aalge*) at a maximum frequency of one 5-hour visit per day between July 2011 and July 2012. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on Southeast Farallon Island. The researchers plan to access the island's two landing areas, the North Landing and the East Landing, by 14 to 18 ft (4.3 to 5.5 m) open motorboats, which are hoisted onto the island using a derrick system and then travel by foot to coastal areas of the island to view breeding seabirds from behind an observation blind.

#### Field Station Resupply on Southeast Farallon Island

PRBO proposes to resupply the field station once every two weeks at a maximum frequency of 26 visits. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat. At East Landing—the primary landing site—all personnel assisting with the landing would stay on the loading platform approximately 30 ft (9.1 m) above the water. At North Landing, loading operations would occur at the water level in the intertidal areas.

#### Seabird Research on Año Nuevo Island

PRBO, in collaboration with Oikonus-Ecosystem Knowledge, proposes to monitor seabird burrow nesting habitat quality and to conduct habitat restoration at a maximum frequency of 20 visits per year. This activity involves two to three researchers accessing the north side of the island by a 12 ft (3.7 m) Zodiac boat. Once onshore, the researchers will check subterranean nest boxes and restore any nesting habitat for approximately 15 min.

#### Seabird Research on Point Reyes National Seashore

The National Park Service in collaboration with PRBO monitors seabird breeding and roosting colonies; conducts habitat restoration; removes non-native plants; monitors intertidal areas; maintains coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats (12 to 22 ft; 3.6 to 6.7 m) along the Point Reyes National Seashore shoreline. Researchers would visit the site at a maximum frequency of 20 times

per year, with an emphasis on increasing monitoring during the nesting season. Researchers would conduct occasional, intermittent visits during the rest of the year.

#### *Pinniped Research on West End Island*

Pinniped research activities involve surveying breeding northern elephant seals on West End Island between early December and late February. At least three researchers would visit the site at a maximum frequency of five times per year. To conduct the census, the researchers would travel by foot approximately 1,500 ft (457.2 m) above the site to conduct the census.

NMFS outlined the purpose of the program in the Notice of Proposed IHA (76 FR 30311, May 25, 2011). The activities to be conducted have not changed between the Notice of Proposed IHA (76 FR 30311, May 25, 2011) and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including a discussion of associated acoustic and visual stimuli from the pinniped and seabird research, NMFS refers the reader to the Notice of Proposed IHA (76 FR 30311, May 25, 2011), the application, and associated documents referenced earlier in this document.

#### **Comments and Responses**

NMFS published a notice of receipt of the PRBO application and proposed IHA in the **Federal Register** on May 25, 2011 (76 FR 30311). During the 30-day public comment period, NMFS received no comments from the public and one letter from the Marine Mammal Commission (Commission), which recommended that NMFS issue the requested authorization provided that PRBO carry out the required mitigation measures and monitoring as described in the Notice of Proposed IHA (76 FR 30311, May 25, 2011). NMFS has included all measures proposed in the Notice of Proposed IHA (76 FR 30311, May 25, 2011) in the authorization.

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

The marine mammals most likely to be harassed incidental to conducting seabird and pinniped research at the research areas on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population of the Steller sea lion, which is listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). California sea

lions, northern elephant seals, and Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA.

NMFS included a more detailed discussion of the status of these stocks and their occurrence at SEFI, ANI, and PRNS in the Notice of Proposed IHA (76 FR 30311, May 25, 2011).

#### **Potential Effects on Marine Mammals**

Acoustic and visual stimuli generated by: (1) Motorboat operations; and (2) the appearance of researchers may have the potential to cause Level B harassment of any pinnipeds hauled out on Southeast Farallon Island, Año Nuevo Island, or Point Reyes National Seashore. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

The effects of the pinniped and seabird research activities would be limited to short-term startle responses and localized behavioral changes and have the potential to temporarily displace the animals from a haulout site. NMFS would expect the pinnipeds to return to a haulout site within 60 min of the disturbance (Allen *et al.*, 1985) and does not expect that the pinnipeds would permanently abandon a haulout site during the conduct of pinniped and seabird research operations.

Finally, no research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups to occur.

For a more detailed discussion of behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring, NMFS refers the reader to the Notice of Proposed IHA (76 FR 30311, May 25, 2011), the application, and associated documents.

#### **Anticipated Effects on Habitat**

NMFS does not anticipate that the research operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the research areas, including the food sources they use (*i.e.*, fish and invertebrates). NMFS does not anticipate that there would be any physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and

reversible. See the Notice of Proposed IHA (76 FR 30311, May 25, 2011).

#### **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.

PRBO has based the mitigation measures described herein, to be implemented for the seabird and pinniped research activities, on the following:

(1) Protocols used during previous PRBO seabird and pinniped research activities as approved by NMFS;

(2) Recommended best practices in Richardson *et al.* (1995);

(3) The Terms and Conditions of Scientific Research Permit 373–1868–00; and

(4) The Terms and Conditions listed in the Incidental Take Statement for NMFS' 2008 Biological Opinion for these activities.

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

(1) Abide by all of the Terms and Conditions listed in the Incidental Take Statement for NMFS' 2008 Biological Opinion, including: Monitoring for offshore predators and reporting on observed behaviors of Steller sea lions in relation to the disturbance.

(2) Abide by the Terms and Conditions of Scientific Research Permit 373–1868–00.

(3) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(4) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed, with the first priority being avoiding the disturbance of Steller sea lions at haulouts.

(5) Avoid visits to sites used by pinnipeds for pupping.

(6) Monitor for offshore predators and not approach hauled out Steller sea lions or other pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are seen in the area. If predators are seen, eastern U.S. stock Steller sea lions or any other

pinniped must not be disturbed until the area is free of predators.

(7) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(8) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(9) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(10) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and to coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(11) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(12) Have the lead biologist serve as an observer to evaluate incidental take.

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse 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: (i) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (ii) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (iii) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation 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 in the action area.

PRBO will sponsor a marine mammal monitor during the present research project, in order to implement the mitigation measures thus satisfying the monitoring requirements of the IHA. PRBO's monitoring activities will consist of monitoring the area for pinnipeds during all research activities and conducting and recording observations on pinnipeds within the vicinity of the research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, numbers of animals that were alert or moved greater than one meter, and numbers of pinnipeds that flushed into the water.

### Reporting

The PRBO will submit a final monitoring report to the NMFS Director of Office of Protected Resources no later than 90 days after the expiration of the IHA. The final 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. The final report will provide:

(i) A summary and table of the dates, times, and weather during all seabird and pinniped research 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 or visual stimuli associated with the seabird and pinniped research 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 PRBO's activities cause any taking of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., vessel-strike), PRBO shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by e-mail to [Michael.Payne@noaa.gov](mailto:Michael.Payne@noaa.gov) and [Jeannine.Cody@noaa.gov](mailto:Jeannine.Cody@noaa.gov), and the Southwest Regional Stranding Coordinators ([Joe.Cordaro@noaa.gov](mailto:Joe.Cordaro@noaa.gov)

and [Sarah.Wilkin@noaa.gov](mailto:Sarah.Wilkin@noaa.gov)). The report must include the following information: (a) Time, date, and location (latitude/longitude) of the incident; the name and type of vessel involved; the vessel's speed during and leading up to the incident; description of the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

PRBO shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with PRBO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. PRBO may not resume their activities until notified by NMFS in writing via a letter or e-mail or via the telephone.

In the event that PRBO discovers an injured or dead marine mammal, and the lead researcher 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), PRBO will immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by e-mail to [Michael.Payne@noaa.gov](mailto:Michael.Payne@noaa.gov) and [Jeannine.Cody@noaa.gov](mailto:Jeannine.Cody@noaa.gov), and the Southwest Regional Stranding Coordinators ([Joe.Cordaro@noaa.gov](mailto:Joe.Cordaro@noaa.gov) and [Sarah.Wilkin@noaa.gov](mailto:Sarah.Wilkin@noaa.gov)). The report must include the same information required above for unauthorized takings. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with PRBO to determine whether modifications in the activities are appropriate.

In the event that PRBO discovers an injured or dead marine mammal, and the lead researcher 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), PRBO will report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by e-mail to [Michael.Payne@noaa.gov](mailto:Michael.Payne@noaa.gov) and [Jeannine.Cody@noaa.gov](mailto:Jeannine.Cody@noaa.gov), and the Southwest Regional Stranding Coordinators ([Joe.Cordaro@noaa.gov](mailto:Joe.Cordaro@noaa.gov)

and Sarah.Wilkin@noaa.gov) within 24 hours of the discovery. PRBO will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

#### **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].

NMFS anticipates take by Level B harassment only as a result of the pinniped and research operations on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Based on PRBO's previous research experiences, with the same activities conducted in the research areas, NMFS estimates that small numbers of California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions could be potentially affected by Level B behavioral harassment over the course of the IHA.

For this IHA, NMFS has authorized the take of 5,104 California sea lions, 526 harbor seals, 190 northern elephant seals, and 20 Steller sea lions. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the areas, NMFS expects no injury, serious injury, or mortality to occur, and no takes by injury or mortality are authorized.

#### **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 mortalities;
- (2) The number and nature of anticipated injuries;
- (3) The number, nature, and intensity, and duration of Level B harassment; and
- (4) The context in which the takes occur.

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 or equal to two percent) relative to the population size.

NMFS does not anticipate takes by Level A harassment, serious injury, or mortality to occur as a result of PRBO's research activities, and none are authorized. These species may exhibit behavioral modifications, including temporarily vacating the area during the seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. However, NMFS anticipates only short-term behavioral disturbance to occur due to the brief duration of the research activities, the availability of alternate areas for marine mammals to avoid the resultant acoustic and visual disturbances, and limited access of PRBO researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season. Due to the nature, degree, and context of the behavioral harassment anticipated, NMFS does not expect these activities 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 finds that the impact of conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California, July 29, 2011 through July 28, 2012, will result in the incidental take of small numbers of marine mammals, by Level B behavioral harassment only, and that the total taking from PRBO's activities would have a negligible impact on the affected species or stocks; and that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

#### **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. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

#### **Endangered Species Act**

The Steller sea lion, eastern U.S. stock is listed as threatened under the ESA and occurs in the research area. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA. On November 18, 2008, NMFS issued a Biological Opinion (2008 BiOp); concluded that the issuance of an IHA is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions; and issued an incidental take statement (ITS) for Steller sea lions pursuant to section 7 of the ESA. The ITS contains reasonable and prudent measures for implementing terms and conditions to minimize the effects of this take. NMFS has reviewed the 2008 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 no new 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 2008 BiOp. Therefore, the IHA does not require the reinitiation of Section 7 consultation under the ESA.

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

To meet NMFS' NEPA requirements for the issuance of an IHA to PRBO, NMFS prepared an Environmental Assessment (EA) in 2007 that was specific to seabird research activities on SEFI, WEI, ANI, and PRNS and evaluated the impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from seabird research in Central California. At that time, NMFS determined that conducting the seabird research would not have a significant impact on the quality of the human environment and issued a Finding of No Significant Impact (FONSI) and, therefore, it was not necessary to prepare an environmental impact statement for the issuance of an IHA to PRBO for this activity. In 2008, NMFS prepared a supplemental EA (SEA) titled "Supplemental Environmental Assessment for the issuance of an Incidental Harassment Authorization To Take Marine Mammals by Harassment Incidental to Conducting Seabird And Pinniped Research in Central California And Environmental Assessment For The Continuation of Scientific Research on Pinnipeds in California Under Scientific Research Permit 373-1868-00," to

address new available information regarding the effects of PRBO's seabird and pinniped research activities that may have cumulative impacts to the physical and biological environment. At that time, NMFS concluded that issuance of an IHA for the December 2008 through 2009 season would not significantly affect the quality of the human environment and issued a FONSI for the 2008 SEA regarding PRBO's activities. In conjunction with this year's application, NMFS has again reviewed the 2007 EA and the 2008 SEA 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 2008 FONSI. A copy of the EA, SEA, and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

#### Authorization

As a result of these determinations, NMFS has issued an IHA to PRBO to take marine mammals, by Level B harassment only, incidental to conducting seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 29, 2011.

**Helen M. Golde,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA396**

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Shallow Hazards Survey in the Chukchi Sea, Alaska

**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 Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Statoil USA E&P Inc. (Statoil)

to take, by harassment, small numbers of 13 species of marine mammals incidental to shallow hazards and geotechnical surveys in the Chukchi Sea, Alaska, during the 2011 Arctic open-water season.

**DATES:** Effective August 1, 2011, through November 30, 2011.

**ADDRESSES:** Inquiry for information on the incidental take authorization should be addressed 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. A copy of the application containing a list of the references used in this document, NMFS' 2010 Environmental Assessment (EA), 2011 Supplemental Environmental Assessment (SEA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427-8401 or Brad Smith, NMFS, Alaska Region, (907) 271-3023.

#### SUPPLEMENTARY INFORMATION:

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking 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 regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

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 established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by 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].

Section 101(a)(5)(D) 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 marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

NMFS received an application on March 1, 2011, from Statoil for the taking, by harassment, of marine mammals incidental to shallow hazards site surveys and soil investigations (geotechnical boreholes) in the Chukchi Sea, Alaska, during the 2011 open-water season. After addressing comments from NMFS, Statoil modified its application and submitted a revised application on April 19, 2011. The April 19, 2011, application was the one available for public comment (see **ADDRESSES**) and considered by NMFS for the IHA.

The shallow hazards and site clearance surveys would use a towed airgun cluster consisting of four, 10-in<sup>3</sup> airguns with a ~600 m (1,969 ft) towed hydrophone streamer, as well as additional lower-powered and higher frequency survey equipment for collecting bathymetric and shallow sub-bottom data. The proposed survey will take place on and near Statoil's leases in the Chukchi Sea, covering a total area of ~665 km<sup>2</sup> located ~240 km (150 mi) west of Barrow and ~165 km (103 mi) northwest of Wainwright, in water depths of ~30–50 m (100–165 ft).

The geotechnical soil investigations will take place at prospective drilling locations on Statoil's leases and leases jointly owned with ConocoPhillips Alaska Inc. (CPAI). All cores will be either 5.3 cm or 7.1 cm (2.1 in. or 2.8 in.) in diameter (depending on soil