Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Avenue, South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14655.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq*.) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to continue to monitor the abundance and distribution of sea turtles in the waters of Mosquito Lagoon in Volusia and Brevard Counties, Florida. Up to 40 green, 40 loggerhead, and 1 Kemp's ridley sea turtles would be captured, flipper and PIT tagged, blood sampled and/or tissue biopsied, lavaged, and released annually. Up to 12 green and 10 loggerhead turtles may be tracked using a sonic transmitter. The permit is requested for five years.

Dated: September 24, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–23471 Filed 9–28–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE28

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

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, NMFS has received an application from the St. George Reef Lighthouse Preservation Society (SGRLPS), for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by incidental harassment, incidental to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean. Pursuant to the Marine Mammal Protection Act, as amended, NMFS requests comments on its proposal to authorize SGRLPS to incidentally take, by Level B harassment only, small numbers of marine mammals, incidental to conducting aircraft operations, and lighthouse renovation and light maintenance activities for one year. Since the proposed activities would occur in the vicinity of pinniped haul out sites, marine mammals could be disturbed as a result of helicopter landing/takeoff and human presence; therefore, SGRLPS has requested an IHA.

DATES: Comments and information must be received no later than October 29, 2009.

ADDRESSES: Comments on the application 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 20910–3225. The mailbox address for providing email comments is *PR1.0648–XE28@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document 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: Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 713–2289 or Monica DeAngelis, NMFS Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals, for periods of not more than one year, 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, 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. 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. 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) 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. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i) of the MMPA, the Secretary shall issue the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii) of the MMPA.

Summary of Request

On October 13, 2006, NMFS received an application from SGRLPS for the incidental taking by Level B harassment only, of small numbers of four species of marine mammals incidental to aircraft operations and restoration and maintenance activities on the St. George Reef Light Station (Station). Since the proposed activities would occur in the vicinity of a pinniped haul out site, marine mammals could be disturbed as a result of helicopter landings/takeoffs and human presence, therefore, SGRLPS has requested an IHA.

The United States Coast Guard (USCG) decommissioned the Station in 1975. In 1996, the United States Government Services Administration, and the government of Del Norte County transferred the management and upkeep of the Station to SGRLPS which aims to restore and restore and preserve the Station which is listed in the National Park Service's National Register of Historic Places (Reference Number 93001373).

In 2002, the SGRLPS applied for a Private Aid to Navigation (PATON) permit from the USCG to install a new solar- and wind-powered optic light system for the Station. A PATON is a buoy, light or day beacon owned and maintained by any individual or organization other than the USCG. The USGS issued the PATON permit to SGRLPS with the condition that, should repairs be necessary, they must be completed within a stipulated time period. However, the USCG revoked the PATON permit in 2003, when the optic light system experienced a failure and the SGRLPS was not able to repair it within the stipulated time period.

In order to renew the PATON permit to conduct annual maintenance of the Station's optical light system, as well as to conduct emergency maintenance in the event of equipment failure, the USCG recommended that the SGRLPS obtain an Endangered Species Act (ESA; 16 U.S.C. 1531 et. seq.) permit from the U.S. Fish and Wildlife Service (USFWS) for migratory birds and a MMPA incidental take authorization and ESA permit for marine mammals from NMFS.

Description of the Specified Geographic Region

The Station is located on a small, rocky islet known as Northwest Seal Rock (NWSR) (41° 50'24'' N, 124° 22'06'' W) approximately nine kilometers (km) (6.0 miles (mi)) offshore of Crescent City, California in the northeast Pacific Ocean. NWSR is a rocky formation approximately 91.4 meters (m) (300 feet (ft) in diameter that peaks at 5.18 meters (m) (17 feet (ft)) above mean sea level. The Station, built in 1892, rises 45.7 m (150 ft) above the sea, consists of hundreds of granite blocks, is topped with a cast iron lantern room, and covers much of the surface of the islet.

Description of the Specified Activity

SGRLPS proposes to conduct the proposed activities (aircraft operations, lighthouse restoration, and light maintenance activities) between November 1, 2009, and April 30, 2010, at a maximum frequency of one session per month. The proposed 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 proposed restoration activities would require SGRLPS to transport personnel and equipment from the California mainland to NWSR by a small helicopter. SGRLPS plans to charter a Raven R44 helicopter, owned and operated by Air Shasta Rotor and Wing, LLC. The Raven R44, which seats three passengers and one pilot, is a compact-sized (1134 kilograms (kg), 2500 pounds (lbs)) helicopter with two-bladed main and tail rotors. Both sets of rotors are fitted with noise-attenuating blade tip caps that would decrease flyover noise. Helicopter landings take place on top of the engine room (caisson) which is approximately 15 m (48 ft) above the surface of the rocks on NWSR.

SGRLPS proposes to 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 30 helicopter landings/takeoffs per month. During landing, the helicopter would land on the caisson to allow the work crew members to disembark and retrieve their equipment located in a basket attached to the underside of the helicopter. The helicopter would then return to the mainland to pick up additional personnel and equipment. Even though SGRLPS would use the helicopter to transport work crew members and materials on the first and last days of the three-day activity, the helicopter would likely fly to and from the Station on all three days of the restoration and maintenance activities.

Proposed schedule: SGRLPS proposes a maximum of 12 flights (six arrivals and six departures) for the first day. The first flight would depart from Crescent City Airport (Latitude: 41°46′48″ N; Longitude: 124°14′11″ W) at 9 a.m. for a six-minute flight to NWSR. The helicopter would land and takeoff immediately after offloading personnel and equipment every 20 minutes (min). The total duration of the first day's aerial operations would last for approximately three hours (hrs) and 26 min and would end at approximately 12:30 p.m. Crew members would remain overnight at the Station and would not return to the mainland on the first day.

For the second day, the SGRLPS proposes a maximum of 2 flights (one arrival and one departure) to transport no more than three crew members off of NWSR. The first flight would depart from Crescent City Airport at 9 a.m. for a six-minute flight to NWSR. The total duration of the second day's aerial operations would last for approximately 26 min.

For the final day of operations, SGRLPS proposes to conduct a maximum of eight helicopter flights (four arrivals and four departures) to transport the remaining crew members and equipment/material back to the Crescent City Airport.

As a mean of funding support for the restoration activities, the SGRLPS will conduct public tours of the Station during the last day of the proposed restoration and maintenance activities. SGRLPS proposes to transport visitors to the Station during the Sunday work window period. Although some of these flights would be conducted solely for the transportation of tourists, those flights would be conducted at a later stage when no pinnipeds are expected

to be at the Station. No additional allowance is included for animals that might be affected by additional flights for the transportation of tourists. The total duration of the last day's aerial operations would last for approximately four hrs.

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. SGRLPS expects to complete most of the major restoration work within two to three years.

Light Maintenance Activities

As required by the USCG, in order to maintain the beacon light as a PATON, the SGRLPS will need to conduct maintenance at least once or up to two times per year within the proposed work window. Scheduled light maintenance activities would coincide with lighthouse restoration activities conducted monthly during the period of November 1, 2009, through April 30, 2010. The SGRLPS expects that maintenance activities would not exceed three hrs per monthly session.

Emergency Light Maintenance

If the beacon light fails during the period November 1, 2009, through April 30, 2010, the SGRLPS proposes to 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 proposes to 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 November 1, 2009, and April 30, 2010, 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 the ultimate knowledge regarding the animal use and abundance of the NWSR at the time of the repair request and 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.

Complete automation of the light generating system and automatic backup system will minimize maintenance and emergency repair visits to the island. The light is solar powered using one solar panel; an installed second panel serves as a backup which is automatically activated if needed. A second smaller bulb in the lantern is activated if the primary bulb fails. Use of high quality, durable materials and thorough weatherproofing is planned to minimize trips for maintenance and repair in the future. All tools and supplies are stored on the island so that a minimal number of transport trips for emergency maintenance will be necessary.

Description of Marine Mammals in the Activity Area

The marine mammal species likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion (*Zalophus californianus*), the Pacific Harbor seal (*Phoca vitulina*), the eastern (Distinct Population Segment) U.S. stock of Steller sea lion (Eumetopias jubatus), and the and the eastern Pacific stock of northern fur seal (*Callorhinus ursinus*). General information of these species can be found in Caretta *et al.*, (2008) and Angliss and Allen (2009) and is available at the following URLs: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2008.pdf* respectively. Refer to these documents for information on these species. Additional information on these species is presented below this section.

California sea lion

California sea lions are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The California sea lion includes three subspecies: *Z. c. wollebaeki* (on the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; herein referred to as the California sea lion). The subspecies is comprised of three stocks: (1) the U.S. stock, beginning at the U.S./Mexico border extending northward into Canada; (2) the western Baja California stock, extending from the U.S./Mexico border to the southern tip of the Baja California peninsula; and (3) the Gulf of California stock, which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.*, 1992).

In 2008, the estimated population of the U.S. stock of California sea lion ranges from 141,842 to 238,000 animals and the maximum population growth rate was 6.52 percent when pup counts from El Nino years (1983, 1984, 1992, 1993, 1998, and 2003) were removed (Carretta *et al.*, 2008).

Major rookeries for the California sea lion exist on the Channel Islands off southern California and on the islands situated along the east and west coasts of Baja California. Males are polygamous, establishing breeding territories that may include up to fourteen females. They defend their territories with aggressive physical displays and vocalization. Sea lions reach sexual maturity at four to five years old and the breeding season lasts from May to August. Most pups are born from May through July and weaned at 10 months old.

Crescent Coastal Research (CCR) conducted a three-year (1998–2000) survey of the wildlife species on NWSR for the SGRLPS. They reported that counts of California sea lions on NWSR varied greatly (from six to 541) during the observation period from April 1997 through July 2000. CCR reported that counts for California sea lions during the spring (April - May), summer (June - August), and fall (September - October), averaged 25, 154, and 235, respectively (CCR, 2001).

Pacific harbor seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardsi* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including: the outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters. Two of these stocks, the California stock and Oregon/Washington coast stock, of Pacific harbor seals are identified off the coast of Oregon and California for management purposes under the MMPA. However, the stock boundary is difficult to distinguish because of the continuous distribution of harbor seals

along the west coast and any rigid boundary line is (to a greater or lesser extent) arbitrary, from a biological perspective (Carretta *et al.*, 2008). Due to the location of the proposed project which is situated near the border of Oregon and California, both stocks could be present within the proposed project area.

In 2008, the estimated population of the California of Pacific harbor seals ranged from 31,600 to 34,233 animals and the maximum population growth rate was 3.5 percent. The estimated population of the Oregon/Washington coast stocks was 22,380 animals and the maximum population growth rate was 4.0 percent. (Carretta *et al.*, 2008)

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups. The nearest harbor seal rookery relative to the proposed project site is at Castle Rock National Wildlife Refuge, located approximately located 965 m (0.6 mi) south of Point St. George, and 2.4 km (1.5 miles) north of the Crescent City Harbor in Del Norte County, California (USFWS, 2007).

CCR noted that harbor seal use of NWSR was minimal, with only one sighting of a group of six animals, during 20 observation surveys. They hypothesized that harbor seals may avoid the islet because of its distance from shore, relatively steep topography, and full exposure to rough and frequently turbulent sea swells.

Northern fur seal

Northern fur seals are not listed as threatened or endangered under the ESA. However, they are categorized as depleted under the MMPA. Northern fur seals occur from southern California north to the Bering Sea and west to the Sea of Okhotsk and Honshu Island of Japan. Two separate stocks of northern fur seals are recognized within U.S. waters: an Eastern Pacific stock distributed among sites in Alaska, British Columbia; and a San Miguel Island stock distributed along the west coast of the continental U.S.

Northern fur seals may temporarily haul out on land at other sites in Alaska, British Columbia, and on islets along the west coast of the continental United States, but generally this occurs outside of the breeding season (Fiscus, 1983).

In 2008, the estimated population of the San Miguel Island stock ranged from 5,096 to 9,424 animals and the maximum population growth rate was 8.6 percent (Carretta *et al.*, 2008).

Northern fur seals breed in Alaska and migrate along the west coast during fall and winter. Due to their pelagic habitat, they are rarely seen from shore in the continental U.S., but individuals occasionally come ashore on islands well offshore (i.e., Farallon Islands and Channel Islands in California). During the breeding season, approximately 74 percent of the worldwide population is found on the Pribilof Islands in Alaska, with the remaining animals spread throughout the North Pacific Ocean (Lander and Kajimura, 1982).

CCR observed one male northern fur seal on NWSR in October, 1998 (CCR, 2001). It is possible that a few animals may use the island more often that indicated by the CCR surveys, if they were mistaken for other otariid species (M. DeAngelis, NMFS, pers. comm.).

Steller sea lion

The Steller sea lion eastern stock is listed as threatened under the ESA and is categorized as depleted under the MMPA. Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.*, 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. Two separate stocks of Steller sea lions were recognized within U.S. waters: an eastern U.S. stock, which includes animals east of Cape Suckling, Alaska (144E W), and a western U.S. stock, which includes animals at and west of Cape Suckling (Loughlin, 1997). The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas.

In 2008, the estimated population of the eastern U.S. stock ranged from 44,404 to 55,832 animals and the maximum population growth rate was 3.1 percent (Angliss and Allen, 2009).

The eastern U.S. stock of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California; there are no rookeries located in Washington state. Counts of pups on rookeries conducted near the end of the birthing season are nearly complete counts of pup production.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS 1995, Trujillo *et al.*, 2004, Hoffman et al., 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.*, 2007).

CCR reported that Steller sea lion numbers at NWSR ranged from 20 to 355 animals. Counts of Steller sea lions during the spring (April - May), summer (June - August), and fall (September - October), averaged 53, 110, and 56, respectively (CCR, 2001). A more recent survey at NWSR between 2000 and 2004 showed Steller sea lion numbers ranged from 175 to 354 in July (M. Lowry, NMFS/SWFSC, unpubl. data). Winter use of NWSR by Steller sea lion is presumed to be minimal, due to inundation of the natural portion of the island by large swells.

Cetaceans

There are several endangered cetaceans that may be transiting near the project area: the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeanliae*), sei (*Balaenoptera borealis*), north Pacific right (*Eubalena japonica*), sperm (*Physeter macrocephalus*), and southern resident killer (*Orcinus orca*) whales. Therefore, these species are typically found farther offshore than the proposed action area. However, this proposed IHA will only address requested take authorizations for pinnipeds.

Potential Effects of the Proposed Activity on Marine Mammals

Possible Effects of Aircraft Operations

The proposed helicopter operations have the potential to adversely impact Steller sea lions, California sea lions, Pacific harbor seals, and northern fur seals, hauled out on the rocky islet. Noise generated from helicopter activities may cause harassment of pinnipeds, both hauled out and in the water, at or directly below the surface.

The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. Airborne sound from a low flying helicopter or airplane may be heard by marine mammals while at the surface or underwater. In general, helicopters tend to be noisier than fixed wing aircraft of similar size, and larger aircraft tend to be louder than those that are smaller. Underwater sounds from aircraft are strongest just below the surface and directly under the aircraft.

Noise from aircraft would not be expected to cause direct physical effects but have the potential to affect behavior. The primary factor that may influence abrupt movements of animals is engine noise, specifically changes in engine noise. Responses by mammals could include hasty dives or turns, change in course, or flushing and stampeding from a haul out site. There are few well documented studies of the impacts of aircraft overflight over pinniped haul out sites or rookeries, and many of those that exist, are specific to military activities (Efroymson *et al.*, 2001).

Several factors complicate the analysis of long- and short-term effects for aircraft overflights. Information on behavioral effects of overflights by military aircraft (or component stressors) on most wildlife species is sparse. Moreover, models that relate behavioral changes to abundance or reproduction, and those that relate behavioral or hearing effects thresholds from one population to another are generally not available. In addition, the aggregation of sound frequencies, durations, and the view of the aircraft into a single exposure metric is not always the best predictor of effects and it may also be difficult to calculate. Overall, there has been no indication that single or occasional aircraft flying above pinnipeds in water cause long term displacement of these animals (Richardson *et al.*, 1995). The Lowest Observed Adverse Effects Levels (LOAELs) are rather variable for pinnipeds on land, ranging from just over 150 m (492 ft) to about 2,000 m (6,562 ft) (Efroymson *et al.*, 2001). A conservative (90th percentile) distance effects level is 1,150 m (3,773 ft). Most thresholds represent movement away from the overflight. Bowles and Stewart (1980) estimated an LOAEL of 305 m (1,000 ft) for helicopters (low and landing) in California sea lions and harbor seals observed on San Miguel Island, CA; animals responded to some degree by moving within the haul out and entering into the water, stampeding into the water, or clearing the haul out completely. Both species always responded with the raising of their heads. California sea lions appeared to react more to the visual cue of the helicopter than the noise.

It is likely that a helicopter landing at the Station would cause 100 percent of the pinnipeds on NWSR to flush, however, they appear to show rapid habituation to helicopter landing and departure (Crescent Coastal Research, 2001; Guy Towers, SGRLPS, pers. com.). According to the CCR Report (2001), while up to 40 percent of the California and Steller sea lions present on the rock have been observed to enter the water on the first of a series of helicopter landings, as few as 0 percent have flushed on subsequent landings on the same date.

Noise testing performed on the R44 Raven Helicopter, as required for Federal Aviation Administration approval, required an overflight at 150 m (492 ft) above ground level, 109 knots and a maximum gross weight of 1,134 kg (2,500 lbs). The noise levels measured on the ground at this distance and speed were 81.9 decibels (dB) (A-weighted) for the model R44 Raven I, or 81.0 dB (A-weighted) for the model R44 Raven II (NMFS, 2007).

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 the Station 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 initial helicopter approaches. The movement to the water is expected to be gradual due to the required controlled helicopter approaches (see Mitigation and Monitoring section), the small size of the aircraft, relatively quiet rotors, and behavioral habituation on the part of the animals as helicopter trips continue throughout the day. During the sessions of helicopter activity, some animals may be temporarily displaced from the island and either raft in the water or relocate to other haul-outs.

Sea lions have shown habituation to helicopter flight within a day at the project site and most animals are expected to return soon after helicopter activities cease for that day. By clustering helicopter arrival/departures within a short time period, animals are expected to show less response to subsequent landings. No impact on the population size or breeding stock of Steller sea lions, California sea lions, Pacific harbor seals, or northern fur seals is expected to occur.

Possible Effects of Restoration and Light Maintenance Activities

The proposed restoration activities have the potential to adversely impact Steller sea lions, California sea lions, Pacific harbor seals, and northern fur seals, hauled out on NWSR. Restoration and maintenance activities would involve 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, upgrading the present electrical system; and annual light beacon maintenance.

Any noise associated with these activities is likely to be from light construction (e.g., sanding, hammering, or use of hand drills) and the pinnipeds may be disturbed by human presence. Animals respond to disturbance from humans in the same way as they respond to the risk of predation, by avoiding areas of high risk, either completely or by using them for limited periods (Gill *et al.*, 1996). There is increasing recognition that the effect of human disturbance on wildlife is highly dependent on the nature of the disturbance (Burger *et al.*, 1995; Klein *et al.*, 1995; and Kucey, 2005). Disturbances resulting from human activity and can impact short- and long-term pinniped haul out behavior (Renouf *et al.*, 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.*, 1984; Stewart, 1984; Suryan and Harvey, 1999; Mortenson *et al.*, 2000; and Kucey and Trites, 2006). The apparent skittishness of both harbor seals and Steller sea lions raises concerns regarding behavioral and physiological impacts to individuals and populations experiencing high levels of human disturbance. It is well known that human activity can flush harbor seals off haul out sites (Allen et al., 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; Mortenson *et al.*, 2000).

The Hawaiian monk seal (*Monachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon, 1972). Stevens and Boness (2003) concluded that after the 1997-98 El Nino, when populations of the South American fur seal, Arctocephalus australis, in Peru declined dramatically, seals abandoned some of their former primary breeding sites, but continued to breed at adjacent beaches that were more rugged (i.e., less likely to be used by humans). Abandoned and unused sites were more likely to have human disturbance than currently used sites. In once case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962). However, no impact on the population size or breeding stock of Steller sea lions, California sea lions, Pacific harbor seals, or northern fur seals is expected to occur.

The SGRLPS also expects that there will be no long- or short-term physical impacts to pinniped habitat on NWSR. 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.

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, certain mitigation requirements and restrictions, such as controlled helicopter approaches and limited access period during the pupping season, will be imposed should an IHA be issued. As such, and because any pinnipeds nearby likely would avoid the approaching helicopter, the SGRLPS anticipates that there will be no instances of injury or mortality during the proposed project.

Proposed Monitoring

At least once during the period between November 1, 2009, and April 30, 2010, 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 first year of monitoring.

The qualified biologist shall document use of the island by the Steller sea lions, 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. Photographs of all marine mammals hauled out on the island shall be taken at an altitude greater than 300 m (984 ft) by a skilled photographer, 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. These photographs will be forwarded 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.

Proposed Mitigation

As a way to reduce potential Level B behavioral harassment to marine mammals that would result from the proposed project, NMFS proposes that the following mitigation measures would be required.

Time and Frequency: Lighthouse restoration activities are to be conducted at maximum once per month between November 1, 2009, and April 30, 2010. 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. 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 restoration and maintenance mission for that day.

Avoidance of Visual and Acoustic Contact with People on Island: 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 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.

Proposed Reporting

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 proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The interim report will summarize the dates and locations of restoration and maintenance activities, and all marine mammal sightings (dates, times, locations, activities, associated with the project). The interim report will also include estimates of the number and nature of exposures that could result in the takes of marine mammals by incidental harassment as well as a description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA.

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.

Estimated Take by Incidental Harassment

It is estimated that approximately 204 California sea lions, 172 Steller sea lions, 36 Pacific harbor seals, and 6 northern fur seals could be potentially affected by Level B behavioral harassment over the course of the proposed 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 30 hours of aircraft operations during the course of the proposed activity. These estimates are also based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), calculated for the population variance or average monthly abundance for the six months of the proposed restoration and maintenance project between November 1, 2009, and April 30, 2010. These incidental harassment take numbers represent 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.

All of the potential takes are expected to be Level B behavioral harassment only. Because of the mitigation measures that will be required and the likelihood that some pinnipeds will avoid the area, no injury or mortality to pinnipeds is expected or requested.

Negligible Impact Determination

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting aircraft operations, restoration, and maintenance activities on St. George Reef Light Station on NWSR may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B Harassment) of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the airguns, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals. While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals on NWSR, the number of potential harassment takings is estimated to be relatively small in light of the population size. In addition, no take by death and/or serious injury is anticipated.

Endangered Species Act (ESA)

Under section 7 of the ESA, the USCG has begun consultation on the proposed restoration, maintenance activities. NMFS will also consult internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment for the proposed activity. Before making a determination on the issuance of an IHA, NMFS will ensure compliance with NEPA and its implementing regulations. The EA will be available on the NMFS website upon completion.

Preliminary Conclusions

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily concluded that the impact of the proposed helicopter operations, Station restoration and maintenance activities on NWSR in Del Norte County, California would incidentally take, by level B behavioral harassment only, small numbers of Steller sea lions and California sea lions in the vicinity of the proposed activities.

While behavioral modifications, including temporarily vacating the area during the lighthouse restoration and maintenance period, may be made by these species to avoid the resultant helicopter landing/takeoff and visual disturbance from human presence, the availability of alternate areas within these areas and haul-out sites, and the short and sporadic duration of the restoration and maintenance activities, have led NMFS to preliminarily determine that this action will have a negligible impact on Steller sea lions, California sea lions, Pacific harbor seals, and northern fur seals.

There is no subsistence harvest of marine mammals on or near NWSR; therefore, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses. No take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures proposed in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the SGRLPS to conduct aircraft operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean during November 1, 2009, through April 30, 2010, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 23, 2009.

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–XR87

Marine Mammals; File No. 1100–1849

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Shane Moore, Moore & Moore Films, Box 2980, 1203 Melody Creek Lane, Jackson, Wyoming 83001, has applied for an amendment to Commercial Photography Permit No. 1100–1849.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 29, 2009.

ADDRESSES: The application and related documents are available upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1100–1849.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1100–1849 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 1100–1849, issued on March 22, 2007 (72 FR 14525), authorizes the permit holder to take 10 killer whales (*Orcinus orca*) of the Eastern North Pacific Transient stock, 10 gray whales (*Eschrichtius robustus*), and 10 minke whales (*Balaenoptera acutorostrata*) annually by close approach for filming in the Gulf of Alaska and Bering Sea. The purpose of the project is to document the behavior of marine animals in the presence of the carcass of a gray or minke whale that was killed by killer whales. The holder