

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF AN INCIDENTAL HARASSMENT AUTHORIZATION
TO PRBO CONSERVATION SCIENCE TO TAKE MARINE MAMMALS
INCIDENTAL TO CONDUCTING SEABIRD AND PINNIPED RESEARCH OPERATIONS
IN CENTRAL CALIFORNIA IN 2008**

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Marine Fisheries Service (NMFS) received an application from PRBO Conservation Science (PRBO) requesting an incidental harassment authorization (IHA) pursuant to NMFS' responsibility to authorize the take of small numbers of marine mammals incidental to an otherwise lawful activity, other than commercial fishing, provided that: (1) NMFS determines that the action will have a negligible impact on the affected species or stocks of marine mammals; (2) will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals for taking for subsistence uses; and (3) that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takes are set forth.

NMFS has satisfied those requirements for this authorization for the take of small numbers of four species of marine mammals, by Level B behavioral harassment only, incidental to the conduct of seabird and pinniped research on the South Farallon Islands (SFI), Año Nuevo Island (ANI), Point Reyes National Seashore (PRNS), and San Francisco Bay (SFB), and Sonoma County near the Russian River (RR) in 2008/2009.

In 2007, NMFS issued an IHA, effective from December 12, 2007, until December 11, 2008, to PRBO which authorized incidental harassment activities associated with seabird research activities. Pursuant to the National Environmental Policy Act (NEPA), NMFS prepared an Environmental Assessment (EA) titled, "*Environmental Assessment on the Issuance of an Incidental Harassment Authorization to PRBO Conservation Science to Take Marine Mammals by Harassment Incidental to Conducting Seabird Research in Central California.*" (2007 EA) and subsequently issued a Finding of No Significant Impact (FONSI) for the seabird research activities.

Also in 2007, NMFS issued a Scientific Research Permit (SRP 373-1868-00) to PRBO, effective from April 15, 2007 to April 15, 2012, to conduct scientific research on pinnipeds specifically around SFI, PRNS, SFB, and the RR. Pursuant to National Oceanographic and Atmospheric Administration Administrative Order (NAO) 216-6 § 6.03f(2), NMFS prepared a Categorical Exclusion (CE) Memorandum titled, "*Categorical Exclusion Memorandum regarding issuance of a Scientific Research Permit to Point Reyes Bird Observatory Conservation Science,*" that determined that the pinniped research operations were excluded from the requirement to prepare an EA or an EIS, since, as a class, they do not have a significant effect on the human environment and extraordinary circumstances were not triggered.

In 2007, PRBO reported that a few juvenile Steller sea lions were hauled out in the proposed action area for research on northern elephant seals. In accordance with the permit conditions, PRBO either suspended research operations or relocated research operations to avoid incidentally harassing Steller sea lions.

To better facilitate their pinniped research objectives, PRBO submitted an IHA application on July 28, 2008 to the National Marine Fisheries Service (NMFS) requesting authorization for the possible incidental harassment of small numbers of California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions incidental to conducting seabird and pinniped research.

The only anticipated impacts to the marine mammals would be temporary disturbances caused by the appearance of researchers near the pinnipeds. The potential disturbance might alter pinniped behavior and cause animals to flush from the area. Animals may return to the same site once researchers have left or go to an alternate haul out site, which usually occurs within 30 minutes. The short-term Level B behavioral harassment (separately and cumulatively when added to other stresses marine mammal species face in the environment) resulting from being visually disturbed by the appearance of researchers would be expected to be minimal.

For 2008, NMFS has prepared a Supplemental Environmental Assessment (SEA) to update the 2007 EA for analysis of the IHA associated with the 2008 seabird and pinniped research operations. Pursuant to NAO 216-6 § 5.05c, the preparation of an EA for SRP 373-1868-00 is required for the continuation of pinniped research because the change in circumstance relative to environmental consequences may have an adverse effect upon endangered or threatened species, in this case Steller sea lions (SSL, *Eumetopias jubatus*). Thus the SEA also serves as an EA for the incidental harassment of SSLs incidental to the continuation of pinniped research conducted by PRBO under SRP 373-1868-00.

The *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 the *Environmental Assessment for the Continuation of Scientific Research on Pinnipeds in California Under Scientific Research Permit 373-1868-00*, is collectively referred to as the 2008 SEA/EA for seabird and pinniped research.

2007 EA AND 2008 SEA/EA ANALYSIS

The federal actions analyzed in the 2007 EA and 2008 SEA/EA include conducting seabird research and pinniped research activities in central California. The 2007 EA and the 2008 SEA/EA contain analyses of the impact of conducting research operations, such as those proposed by PRBO, on various marine resources and human activities.

For the purposes of this finding, NMFS analyzed the impact of PRBO's seabird and pinniped research operations on marine mammals (including endangered marine mammals), seabirds and their habitats. Cumulative impacts of subsistence harvest activities, commercial harvest activities, marine pollution, research related mortalities, prey abundance, disease, and natural mortality within SFI, ANI, and PRNS were analyzed in detail in the 2007 EA. Cumulative impacts of existing permits or authorizations that allow for takes of non-endangered pinnipeds in California were analyzed in detail in the 2007 CE. For the 2008 SEA/EA NMFS updated the cumulative impacts analysis section to account for the addition of pinniped research activities in SFB and RR.

The 2007 EA and 2008 SEA/EA analyzed the potential for significant impacts of these activities on environmental resources and identified mitigation measures to avoid and/or minimize those impacts.

SIGNIFICANCE REVIEW

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 CFR §1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria.

NMFS DETERMINATIONS

Based on the 2007 EA and the 2008 SEA/EA, an examination of the potential impacts associated with the proposed actions and a review of comments received from the public and agencies during the Marine Mammal Protection Act (MMPA) decision-making process, NMFS has selected Alternative 3 (Title: Proposed Action) and associated mitigation measures as its action.

NMFS developed mitigation and monitoring measures within the 2007 EA which were incorporated by reference into the 2008 SEA/EA to continue to reduce the likelihood of potential adverse effects. Mitigation, monitoring, and reporting requirements described in Sections 3.2.8, 3.2.9, and 3.2.10 of the 2008 SEA/EA will be included as conditions in PRBO’s 2008 IHA for seabird and pinniped research activities in central California. Mitigations associated with the existing SRP would also remain in place.

Based on NMFS’ review of PRBO’s proposed action, the measures contained in Alternative 3, and the additional mitigation, monitoring, and reporting requirements, NMFS has determined that no significant impacts to the human environment would occur from implementing Alternative 3.

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?

Response: NMFS does not anticipate that the proposed research activities or NMFS’ action (i.e., issuing an IHA to PRBO) would cause substantial damage to ocean and coastal habitats. The proposed seabird and pinniped research operations would only use small watercraft to transport researchers to the proposed research areas, and the research would only involve pedestrian traffic on land, with bird and pinniped observation and censusing, habitat restoration, and non-native plants removal.

The proposed action will not result in the physical altering of marine mammal habitat or major breeding habitat. No survey or sampling equipment will be left in habitat areas; no toxic chemicals will be present; and all state and federal marine regulations, including those from National Marine Sanctuaries, will be followed in regards to boat emissions.

No essential fish habitat would be affected since the proposed action would occur only on land. The proposed research areas are located in a marine sanctuary, wildlife refuges, a National Park, and other conservation areas, which are relatively protected from human disturbances from harvesting and development. The research activities would only add limited small watercraft and pedestrian traffic to the proposed research areas and are well planned to minimize any impacts to the biological and physical environment of the areas by implementing mitigation protocols.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: NMFS does not expect that the proposed research activities nor the issuance of an IHA will have a substantial impact on biodiversity and/or ecosystem function within the affected environment. The proposed seabird and pinniped research operations would only use small watercraft to transport researchers to the proposed research areas. In addition, the research activities would only add limited pedestrian traffic to the proposed research areas and are well planned to minimize any impacts to the biological and physical environment of the areas by implementing mitigation protocols.

The only anticipated impacts to resources under NMFS jurisdiction would be temporary disturbances caused by the appearance of researchers near the pinnipeds. The potential disturbance might alter pinniped behavior and cause animals to flush from the area. Animals may return to the same site once researchers have left or go to an alternate haul out site, which usually occurs within 30 minutes. Impacts to seabirds associated with the seabird research itself are separately assessed by the applicant in accordance with appropriate permitting required for those activities.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: NMFS does not expect that the proposed research activities nor the issuance of an IHA will have a substantial adverse impact on public health or safety. The proposed action would authorize incidental take of marine mammals due to seabird and pinniped research activities in several protected areas.

Although the nature of the research does not preclude the potential for injury or mortality of involved personnel (i.e., boat accidents during research), the applicant and those individuals working under the authority of the permit would be adequately trained to minimize such risk to personnel. There are no private residents within the proposed research areas, and the research would only involve pedestrian traffic on the islands.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: NMFS has determined that the proposed seabird and pinniped research activities may result in some Level B harassment (in the form of short-term changes in behavior) of small numbers, relative to the population sizes of five species of marine mammals—California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*), and Stellar sea lions. The taking by Level A Harassment (potential injury) or serious injury or death is not anticipated nor authorized by the IHA.

Stellar sea lions are the only listed species that may be incidentally affected by Level B behavioral harassment as a result of the proposed research activities. Potential adverse effects on marine mammals that may occur as a result of the proposed action have been analyzed in the 2007 EA titled, "*Environmental Assessment on the Issuance of an Incidental Harassment Authorization to*

PRBO Conservation Science to Take Marine Mammals by Harassment Incidental to Conducting Seabird Research in Central California” and the 2008 SEA/EA titled, “Draft 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 Draft Environmental Assessment for the Continuation of Scientific Research on Pinnipeds in California under Scientific Research Permit 373-1868-00.”

Taking into account the mitigation measures that are planned for the proposed action and analyzed in the EA/SEA ((i.e., Alternative 3), and would be required in the IHA (or are already required in the SRP) NMFS has determined that effects on marine mammals are negligible to the species or stocks. Specifically, impacts to marine mammals (Pacific harbor seals, California sea lions, northern elephant seals, and Steller sea lions) would be temporary Level B behavioral harassment to a limited to a small number of individuals.

In addition, a section 7 consultation under the Endangered Species Act (ESA) was conducted with NMFS Headquarters Office of Protected Resources’ Endangered Species Division to make a determination whether the proposed research projects would cause jeopardy to the eastern U.S. stock of Steller sea lions and adversely affect the survival of the existence of this population. On November 18, 2008, NMFS issued a Biological Opinion and concluded that the issuance of an IHA to PRBO is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions.

NMFS has designated critical habitat for the Steller sea lion around Southeast Farallon Island and Año Nuevo Island, extending from these two rookeries to 3,000 feet offshore. Since the proposed research activities will not have only minor impacts (e.g., foot traffic, watercraft transit) to the physical environment, this proposed action is not likely to result in the destruction or adverse modification of Steller sea lion critical habitat or to the food sources that they use. The project will have negligible impacts to any haul out sites, rafting sites, forage sites, or food resources in the research area.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: The action will not have a significant social or economic impact to commercial fishing or other activities. The proposed research areas are located in a marine sanctuary, wildlife refuges, a National Park, and other conservation areas, which are relatively protected from human disturbances from harvesting and development.

There are no social or economic impacts directly related to physical impacts of activities that would result from issuance of the 2008 IHA. The activities authorized would not substantially impact use of the environment or use of natural or depletable resources, such as might be expected from construction or resource extraction activities.

Issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods.

NMFS has determined that issuance of the IHA will not adversely affect low-income or minority populations. Finally, there is no subsistence harvest of marine mammals in the proposed research

area; therefore, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses.

No significant natural or physical environmental effects would be expected as a result of the proposed action. Socioeconomic benefits would be expected to be minimal and mainly arise from the work of research activities by PRBO and its collaborators—Oikonos Ecosystem Knowledge and the National Park Service's Point Reyes National Seashore.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: NMFS does not expect the effects on the quality of the human environment to be highly controversial. NMFS published a notice of receipt of PRBO's application and proposed IHA in the *Federal Register* (73 FR 56556, September 29, 2008), for a 30-day public review and comment for the proposed action. NMFS received comments on the proposed permit from the Marine Mammal Commission, which recommended issuance of the permit. NMFS received no other comments from the public.

The proposed pinniped research activities are not directed on Steller sea lions and would only involve incidental harassment during research conducted on seabirds and non-listed pinnipeds. PRBO, and its collaborators, have conducted this research for decades and their activities have never been characterized as controversial.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: The PRNS is responsible for preserving nearly 300 historic structures, of which 60 are listed on the National Register of Historic Places including the Pierce Point Ranch and the Point Reyes Light Station. The PRNS has also identified twelve historic cultural landscapes within its boundaries and the north district of Golden Gate National Recreation Area. NMFS recognizes that the sanctuary, national park and wildlife refuges are ecologically important areas. NMFS does not anticipate any substantial impacts to historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or these ecologically critical areas.

Issuance of the 2008 IHA and activities conducted under SRP 373-1868-00 are not reasonably expected to adversely affect entities listed in or eligible for listing in the National Register of Historic Places or to allow substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in fisheries management plans. Activities that have been shown to affect EFH include disturbance or destruction of habitat from stationary fishing gear, dredging and filling, agricultural and urban runoff, direct discharge, and the introduction of exotic species. The proposed action does not include any of these types of activities and is therefore not likely to have an impact on any designated EFH.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: NMFS does not expect the effects on the human environment to be uncertain or involve unique or unknown risks. The seabird researchers would use standard research

methodologies for observation and censusing of common Murres (*Uria aalge*). The pinniped researchers are participating in a 30-year old monitoring effort conducted by PRBO, the National Park Service, and the U.S. Fish and Wildlife Service.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The proposed action is not related to other actions with individually insignificant but cumulatively significant impacts.

Numerous IHAs and Letters of Authorizations issued under the MMPA, Incidental Take Permits issued under Section 10(a)(1)(b) of the ESA, issued by NMFS, and reports on more localized areas have analyzed the potential effects of incidental disturbance to pinnipeds from various sources. Based on these reports, the effects to pinnipeds appear, at the most, to displace the animals temporarily from their haul out sites.

Overall, the proposed seabird and pinniped research operations would be expected to have no more than short-term effects on a small number of marine mammals that may be found in the proposed action area. The short-term Level B behavioral harassment (separately and cumulatively when added to other stresses marine mammal species face in the environment) resulting from being visually disturbed by the appearance of researchers would be expected to be minimal.

Both the 2008 IHA and SRP 373-1868-00 contain conditions requiring PRBO to coordinate their activities with those of other permit holders conducting research on the same species in the same areas. To the extent possible, the IHA and the SRP require that PRBO share data to avoid unnecessary duplication of research and disturbance of animals.

The incremental impact of the action when added to other past, present, and reasonably foreseeable future actions discussed in the 2007 EA and the 2008 SEA/EA would be minimal and not significant and the 2008 IHA would contain conditions to mitigate adverse impacts to marine mammals from the proposed research activities.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: Issuance of the 2008 IHA and activities conducted under SRP 373-1868-00 are not reasonably expected to adversely affect entities listed in or eligible for listing in the National Register of Historic Places. The proposed activities would not take place in any areas listed or eligible for listing in the National Register of Historic Places and would not cause loss or destruction of any significant scientific, cultural, or historic resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: Issuance of the 2008 IHA and activities conducted under SRP 373-1868-00 are not reasonably expected to introduce any non-indigenous species into the environment. PRBO plans to

visit PRNS intermittently to conduct non-native plant management. Researchers would restore natural habitat by removing non-native invasive plants.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: Issuance of the 2008 IHA and activities conducted under SRP 373-1868-00 will not set a precedent for future actions with significant effects nor represent a decision in principle.

To ensure compliance with statutory and regulatory standards, NMFS' actions under section 101(a)(5)(D) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Issuance of an IHA or a SRP to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize others to conduct similar activities. Subsequent requests for incidental take authorizations or requests for research permits would be evaluated upon its own merits relative to the criteria established in the MMPA, ESA, and NMFS' implementing regulations on a case-by-case basis.

The 2007 EA, the 2007 CE, as well as the 2008 SEA/EA, evaluated the potential effects of seabird and pinniped research that would occur only in the 2008-2009 field season. Regarding California sea lions, harbor seals, northern elephant seals, northern fur seals, and Stellar sea lions, there is extensive history and regulatory and procedural structure to evaluate the effects of seabird and pinniped research on the four species of marine mammals. For these reasons, NMFS does not believe that issuance of the 2008 IHA and activities conducted under SRP 373-1868-00 are a precedent setting.

13) Can the proposed action reasonably be expected to violate any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: The proposed seabird and pinniped research operations and IHA would not result in any violation of federal, state, or local laws for environmental protection. The applicant is required to obtain any additional federal, state and local permits necessary to carry out the seabird and pinniped research.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: Issuance of the 2008 IHA and activities conducted under SRP 373-1868-00 are not expected to result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to seabird and pinniped research activities.

Overall, the proposed seabird and pinniped research operations in the IHA would be expected to have no more than short-term effects on a small number of marine mammals that may be found in the proposed action area. In this instance, no directed take of listed marine mammals for scientific research purposes is requested. The short-term Level B behavioral harassment (separately and cumulatively when added to other stresses marine mammal species face in the environment) resulting from being visually disturbed by the appearance of researchers would be expected to be minimal. Specific to pinniped research conducted under SRP 373-1868-00, the directed take of

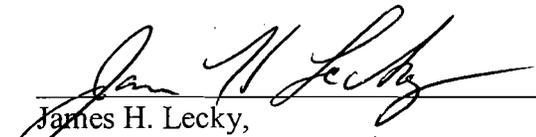
pinnipeds would not change from the existing SRP, except that these activities can not reasonably continue to be conducted in a manner that avoids any Level B behavioral harassment of SSLs.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting 2008 SEA/EA prepared on the effects of the issuance of an IHA and activities conducted under SRP 373-1868-00, it is hereby determined that the issuance of the IHA to PRBO for the taking of marine mammals incidental to conducting seabird and pinniped research operations in central California will not significantly impact the quality of the human environment as described above and in the 2008 SEA/EA.

In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

DEC - 8 2008



James H. Lecky,
Director, Office of Protected Resources,
National Marine Fisheries Service

Date