

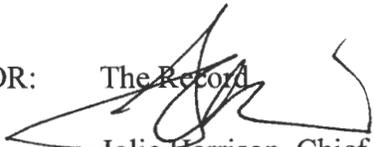


UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

MEMORANDUM FOR:

The Record

FROM:


Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources

SUBJECT:

Environmental Review for Issuance of an Incidental Harassment
Authorization to Glacier Bay National Park to Conduct Seabird
Research and Monitoring

The National Environmental Policy Act (NEPA) and Council on Environmental Quality Regulations (40 CFR Parts 1500-1508) requires all proposed actions to be reviewed with respect to environmental consequences on the human environment. This memorandum addresses the determination that the issuance of an Incidental Harassment Authorization (IHA) to Glacier Bay National Park (Glacier Bay NP) is adequately assessed in a previous Environmental Assessment (EA) prepared by the National Marine Fisheries Service (NMFS) and that no further NEPA review is required.

Federal Action

NMFS proposes to issue an IHA to Glacier Bay NP pursuant to Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). The IHA will be valid from May 16, 2016 through September 30, 2016 and authorizes takes, by Level B harassment, of harbor seals (*Phoca vitulina*) incidental to seabird monitoring on Glacier Bay NP. The IHA prescribes permissible methods of takes and includes mitigation, monitoring and reporting requirements.

The MMPA prohibits the incidental taking of marine mammals. The incidental take of a marine mammal falls under three categories: Mortality, Serious injury or Harassment (injury and behavioral effects). Harassment, as defined by the MMPA, is any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment) or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns (Level B harassment). Disruption of behavioral patterns includes, but is not limited to, migration, breathing, nursing, breeding, feeding or sheltering. However, there are exceptions to the prohibition on take under the MMPA that gives NMFS the authority to permit the incidental taking of small numbers of marine mammals by harassment upon request from a U.S. citizen, provided certain determinations are made and statutory and regulatory procedures are met. NMFS criteria for issuing IHAs requires



that the taking of marine mammals have a negligible impact on the species or stock(s) and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the IHA must set forth, where applicable, the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

Background

Glacier Bay NP must conduct gull monitoring studies to meet the requirements of a 2010 Record of Decision for a Legislative Environmental Impact Statement (NPS, 2010) which states that Glacier Bay NP must initiate a monitoring program for the gulls to inform future native egg harvests by the Hoonah Tlingit in Glacier Bay, AK. Glacier Bay NP actively monitors harbor seals at breeding and molting sites to assess population trends over time (*e.g.*, Mathews & Pendleton, 2006; Womble *et al.*, 2010). Glacier Bay NP also coordinates pinniped monitoring programs with NMFS' National Marine Mammal Laboratory and the Alaska Department of Fish & Game and plans to continue these collaborations and sharing of monitoring data and observations in the future.

To identify the onset of gull nesting; conduct mid-season surveys of adult gulls, and locate and document gull nest sites, Glacier Bay NP proposes to conduct ground-based surveys at a maximum frequency of three visits per site and vessel-based surveys at a maximum frequency of two visits per site. These surveys will take place in the following study areas: Boulder, Lone, and Flapjack Islands and Geikie Rock. Each of these study areas contains harbor seal haulout sites.

Ground-Based Surveys: These surveys involve two trained observers visiting the largest gull colony on each island to: (1) Obtain information on the numbers of nests, their location, and contents (*i.e.*, eggs or chicks); (2) determine the onset of laying, distribution, abundance, and predation of gull nests and eggs; and (3) record the proximity of other species relative to colony locations.

The observers would access each island using a kayak, a 32.8 to 39.4-foot (ft) (10 to 12 meter (m)) motorboat, or a 12 ft (4 m) inflatable rowing dinghy. The landing craft's transit speed would not exceed 4 knots (4.6 miles per hour (mph)). Ground surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls. Glacier Bay NP will discontinue ground surveys after they detect the first hatchling to minimize disturbance to the gull colonies.

Vessel-Based Surveys: These surveys involve two trained observers observing and counting the number of adult and fledgling gulls from the deck of a motorized vessel which would transit around each island at a distance of approximately 328 ft (100 m) to avoid flushing the birds from the colonies. Vessel-based surveys generally last from 30 minutes to up to two hours depending on the size of the island and the number of nesting gulls.

A. Applicants Incidental Take Request(s)

- i. Current Request. On January 12, 2016, NMFS received an application from Glacier Bay NP requesting that we issue an IHA for the take of marine mammals, incidental to conducting monitoring and research studies on glaucous-winged gulls (*Larus glaucescens*) within Glacier Bay NP in Alaska. NMFS determined the application complete and adequate on February 25, 2016.
- ii. Based on the application, NMFS published a proposed IHA in the Federal Register (FR) on March 24, 2016 (81 FR 15684) which included the following:
 - Detailed description of the proposed action and an assessment of the potential impacts on marine mammals and the availability of marine mammals for subsistence uses
 - Proposed mitigation and monitoring measures to avoid and minimize potential adverse impacts to marine mammals and their habitat
 - Proposed reporting requirements
 - Preliminary findings under the MMPA
- iii. Previous Request(s). NMFS has issued two, five-month Authorizations to Glacier Bay NP for the conduct of the same activities in 2014 and 2015 (79 FR 56065, September 18, 2014 and 80 FR 28229, May 18, 2015). This is Glacier Bay NP's third request for an Authorization.
- iv. The monitoring report from the May 18, 2015 IHA indicated that the three sites were accessed a total of 15 times with 57 takes of harbor seals. Take of 500 harbor seals was authorized under that IHA

B. Previous Environmental Assessment

NMFS issuance of an IHA is considered a major federal action under NEPA, therefore, the Office of Protected Resources (OPR) prepared an EA¹ for the initial incidental take request in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508. The analysis in the Final EA addressed the potential impacts to the human environment and natural resources; specifically from NMFS proposed action to authorize takes of marine mammals incidental to Glacier Bay NP's seabird monitoring surveys. The range of alternatives included the No Action alternative (not issuing an IHA) and the Preferred Alternative (the issuance of IHAs) for the take of marine mammals by Level B harassment, incidental to Glacier Bay NP's activities. NMFS analyzed direct, indirect and cumulative impacts and based the scope of its proposed action and alternatives on the relevant requirements in section 101(a)(5)(A) of the MMPA. Based on the findings under the MMPA for Glacier Bay NP's proposed activities and the conclusions in the Final EA, NMFS determined that no significant impacts to the human environment would occur from issuing an IHA and signed a Finding of No Significant Impact (FONSI) on August 26, 2014.

¹ *Environmental Assessment for the Issuance of Incidental Harassment Authorizations to Glacier Bay National Park to Take Marine Mammals by Harassment Incidental to Seabird Monitoring and Research Conducted in Glacier Bay, Alaska.*

Findings and Conclusions

A. Environmental Review

After reviewing and considering (1) the application, (2) public comments received for the proposed IHA (3) the 2014 EA and FONSI, and (4) the 2015 monitoring report, NMFS determined renewing Glacier Bay NP's IHA falls within the scope of the analysis in the 2014 Final EA. There are no changes to NMFS proposed action and alternatives for the IHA renewal and there were no changes to the affected environment or impacts to resources. No new significant circumstances or information relevant to environmental concerns associated with the IHA renewal were identified during the environmental review or the public comment period. There were no new sites added to the original site list, no new species for which take has been authorized, and monitoring and mitigation requirements have remained the same. Glacier Bay NP is proposing to continue seabird monitoring surveys in similar locations and in the same manner or methods previously authorized under the IHAs issued in 2014 and 2015.

B. MMPA Findings

Authorization for incidental takings 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 takings are set forth. NMFS 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."

An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

NMFS does not expect Glacier Bay NP's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality. Any takes from Level B harassment would be limited to the potential behavioral disturbance in the form of short-term startle responses and localized behavioral changes due to the short and sporadic duration of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

There are alternate areas available for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Anecdotal observations and results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Glacier Bay NP conducted their research activities.

There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers would delay ingress into the landing areas only after the pinnipeds have slowly entered the water. Glacier Bay NP would limit access to Boulder, Lone, and Flapjack Islands, and Geikie Rock when there are high numbers (more than 25) harbor seals hauled out (with or without young pups present), any time pups are present, or any time that Steller sea lions are present, the researchers would not approach the island and would not conduct gull monitoring research. The proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, we do not expect the activities to impact annual 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 proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from Glacier Bay NP's proposed research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

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.

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers 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 either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. The small numbers analysis conducted by NMFS determined that PISCO would take less than 6.9% of the harbor seal stock for which take is authorized. Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haulout sites the day the researchers are present. 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, which are expected to reduce the number of marine mammals potentially affected by the action, NMFS finds that small

numbers of marine mammals will be taken relative to the populations of the affected species or stocks

In view of the information presented in this document, OPR determined issuing another IHA to Glacier Bay NP would not result in significant adverse effects, individually or cumulatively, on the human environment. As such, this IHA renewal does not require the preparation of a Supplemental Environmental Assessment.