

rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate¹⁰; (9) jewelry armories¹¹; (10) cheval mirrors¹² (11) certain metal parts¹³ (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set.

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the HTSUS as “wooden * * * beds” and under statistical category 9403.50.9080 of the HTSUS as “other * * * wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as “parts of wood” and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as “glass mirrors * * * framed.” This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend

liquidation of all entries of subject merchandise from the PRC (except for entries of Markor International Furniture (Tianjin) Manufacture Co., Ltd. (“Markor Tianjin”) because this company has a de minimis margin). We will also instruct CBP to require cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: December 27, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072204A]

Taking Marine Mammals Incidental to Specified Activities; Sandholdt Road Bridge Replacement, Moss Landing, California

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the Monterey County Department of Public Works (Monterey County DPW) to take small numbers of marine mammals, by harassment, incidental to the replacement of the Sandholdt Road Bridge (Bridge) in Moss Landing, Monterey County, CA.

DATES: This authorization is effective from April 15, 2005, through April 14, 2006.

ADDRESSES: A copy of the application, IHA, and/or a list of references used in this document may be obtained by writing to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of

Protected Resources, NMFS, (301) 713-2389, ext 128 or Monica DeAngelis, NMFS, (562) 980-3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than 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 and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as: “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Subsection 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 for certain categories of actions 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].

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

¹⁰ As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs’ Headquarters’ Ruling Letter 043859, dated May 17, 1976.

¹¹ Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24” in width, 18” in depth, and 49” in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People’s Republic of China dated August 31, 2004.

¹² Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50” that is mounted on a floor-standing, hinged base.

¹³ Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified in subheading 9403.90.7000, HTSUS.

Summary of Request

On February 26, 2004, NMFS received an IHA application from the California Department of Transportation (CALTRANS) on behalf of the Monterey County DPW. The IHA request is for the potential harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to demolition of the current Bridge and construction of a new Bridge. Construction is scheduled to extend from early to mid-2005 until the fall of 2006. A detailed description of the work planned is contained in the CALTRANS application and in LSA Associates, Inc. (1999).

The County of Monterey, with funding from the Federal Highway Administration (FHWA), proposes to replace the existing one-lane Bridge over the Moss Landing Slough. Sandholdt Road, a two-lane county road, carries an average of about 2700 vehicles per day between Moss Landing Road and part of the community of Moss Landing. The Bridge is of unknown age with a deck replacement having taken place over 54 years ago. The wooden piling system has been weakened by marine bore worms and is decaying. The Bridge, therefore, is at the end of its useful service life. The one-lane Bridge is a traffic safety concern and does not meet Federal standards for rural roads, which require such bridges to have a minimum of two traffic lanes and safe access for pedestrians. The Bridge does not meet structural capacity requirements as it is incapable of withstanding loads over minimum highway legal loads. Further, because of its age and dilapidated condition, the structure is not capable of withstanding a significant earthquake without the possibility of incurring significant damage that may require the Bridge to be closed for repairs. Bridge closure may result in significant economic impact to the community, as the Bridge is the only public access point to the island.

Description of the Activity

The proposed new Bridge will improve traffic operations and safety and provide safe access for pedestrians and bicyclists. The following improvements are planned: (1) Construct a new 321-ft (98-m) long bridge with two 12-ft (3.6-m) travel lanes; (2) improve pedestrian safety by constructing a 5-ft (1.5-m) sidewalk on the north side of the new Bridge with pedestrian lighting; (3) improve safety for bicyclists by constructing 4-ft (1.2-m) bicycle lanes on each side of the new

Bridge; and (4) improve the turn radius of the Bridge approach on the west and the Bridge alignment with Sandholdt Road on the east by constructing the new Bridge 23 m (75 ft) south of the existing structure.

The Bridge will be supported by two bridge abutments and 3 pairs of 1.7-m (5.6-ft) diameter columns. Each of the columns will be supported by a Cast-In-Shell (CISS) pile of the same diameter. Each CISS pile will be installed using standard bridge construction practices. This includes the use of a vibratory hammer to drive the piles down into the substrate and an impact hammer to drive the piles the last 1.7 m (5.6 ft) in order to determine if load capacity has been reached.

The Bridge replacement work will include construction of a temporary access trestle for equipment access during construction that includes installation of wood pilings, installation of temporary supporting framework (falsework) piles, and, later, removal of existing wood piles. The piles and trestle deck will be installed at the same time and the crane that drives the piles will be mounted on the previously constructed portion of the trestle span. The falsework piles will be installed in a similar manner. Construction of the access trestle and falsework will require a total of approximately 200 piles (0.3 to 0.6 m by 15 m (11.8 in. to 24 in. by 49 ft), wood or steel). These piles could be installed with a vibratory hammer and/or drop (impact) hammer. The time to install each pile will be about 30 to 60 minutes.

Construction of the bridge span will require 6 piles (1.7 by 31.75 m (5.6 by 104 ft)) in the slough and 12 piles (0.61 by 19.05 m (2 by 62.5 ft)) on the shore, for the abutment foundation. These will be the CISS piles. They will be installed using a vibratory hammer and a drop (impact) hammer.

A work barge will be anchored at the Bridge site for approximately 3 months to assist with the construction of the temporary access trestle, which will take about 2 weeks. It will take approximately 2 weeks to place embankment earthwork, four weeks to drive the bridge piles, 3 weeks to drive the falsework piles, and approximately 3 weeks to construct the abutments. After the falsework is in place, the superstructure will take approximately 36 weeks to construct.

Once the superstructure is completed, it will take 2 weeks to remove the falsework piles, 2 weeks to remove the access trestle, and about 4 weeks to remove the existing Bridge. The existing piles will be removed from the channel by a crane lifting and applying

vibration. Additional dilapidated pilings along the adjacent shoreline will be removed in a similar manner. These activities will presumably take place under a future IHA because they will occur after the subject IHA expires.

The Monterey County DPW has divided the work year into two seasons, an in-water period and an out-of-water period. In-water construction is limited to the months of June through October, as required by condition 15 of the California Coastal Commission's Coastal Development Permit (CCC CDP). Out-of-water construction activities are defined as any activities located above mean high water (MHW), which is +0.61 m (2.0 ft) at the Sandholdt Road Bridge site. Activities, such as pile driving, are considered "in-water" regardless of the actual tide level at the time of construction. Certain activities, however, are classified as both in-water and out-of-water because some portions of the activity take place above and below the MHW. Most of the activities described in this document are considered "in-water" activities. Because construction activities have the potential to disturb harbor seals moving to and from a haul-out site located about 500–800 m (1640 to 2625 ft) south of the Bridge along the Old Salinas River, an IHA is warranted.

Comments and Responses

A notice of receipt and request for 30-day public comment on the application and proposed authorization was published on August 24, 2004 (69 FR 51992). During the 30-day public comment period, comments were received from the Marine Mammal Commission, Monterey County DPW and one individual. The Commission concurs with NMFS' determinations concerning the impacts of the proposed activities on harbor seals and California sea lions and recommends that the authorization be granted.

Comment 1: Without providing supporting documentation, the individual commenter believes that the project cannot be accomplished without killing seals and that the pinniped population estimates are flawed. In addition, this person believes that seals have few places acceptable to them to live and this construction project will drive them from one of these few sites.

Response: Information was provided in the proposed IHA notice that harbor seals are found at 400 to 500 haul-out sites along the mainland coast and offshore islands of California. Based on the most recent counts, the California stock of the Pacific harbor seal is estimated at 27,863 (Carretta *et al.*, 2003) having a net annual increase of

approximately 3.5 percent, but are increasing at about 7.7 percent annually in Monterey Bay. During Bridge construction, harbor seals will not be killed or seriously injured, but may be disturbed on a daily basis as they are moving to and from the haul-out site located about 500–800 m (1640 to 2625 ft) south of the Bridge site. Due to this distance, no harbor seals are expected to flush from the haul-out.

In the project area approximately 35 individuals are known to haul out along the Old Salinas River approximately 500 to 800 m (1640 to 2625 ft) south of the current Bridge location, with more seals generally found at about 800 m (2625 ft) or more south of the Bridge (J. Harvey, pers. comm). The new Bridge will not eliminate or significantly alter haul-out sites. Therefore, as seen at other construction sites, although there may be short-term abandonment of these haul-out sites due to construction noise, long-term abandonment is unlikely. In addition, since these sites are not prime locations for pupping and nursing (a prime location is nearby in Elkhorn Slough) and in-water work is limited to the period from June through October, it is highly unlikely that this project will significantly impact harbor seals. As California sea lions do not haul out in this area, no impact on sea lion haul-outs is likely.

Comment 2: The Monterey County DPW had several technical corrections to the proposed mitigation measures. First, backup alarms are important for public safety and, therefore, cannot be disabled to reduce noise levels. Second, the County does not have authority to restrict vessel traffic in the vicinity of the Bridge or near the pinniped haul-out site, except to limit vessel traffic by County staff and contractors. Therefore, Monterey County DPW states, neither of these mitigation measures are feasible.

Response: NMFS has not included in the IHA a requirement to disable backup alarms and has modified the vessel traffic restriction to vessels associated with the construction activity itself.

Comment 3: The Monterey County DPW recommends that the biological monitor(s) record noise levels by noting the types of construction equipment being used each day and then refer to the table provided in the CALTRANS application (which provides the typical noise level for each type of equipment). Alternatively, Monterey County DPW recommends the monitor could record in-air noise levels with a simple decibel meter, but it would be difficult to standardize such measurements in a way that would make them meaningful (and in a way that would not interfere with the biologist's primary

responsibility of monitoring the marine mammals).

Response: NMFS believes that in-air noise levels produced by the construction equipment will not cause more than a short-term behavioral response by the affected pinnipeds. As a result, noting behavioral responses made by the harbor seals to the specific type of equipment being used at the time will be sufficient for this activity.

Comment 4: The Monterey County DPW requests that in-water monitoring be restricted to the establishment of in-water buffer zone (as described later in this document), as the cost of more frequent underwater sound monitoring would be prohibitive.

Response: As noted in the CALTRANS' application, when pile-driving is started, a qualified underwater acoustic monitor will record sound pressure levels (SPLs) from the pile driving to determine the distance to the 160- and 190-dB re 1 μ Pa (root-mean-squared or rms) isopleths. The measured 160-dB radius will be the new marine mammal buffer zone and the 190-dB radius will be the marine mammal safety zone for that specific type of activity. This same procedure will be followed to establish the appropriate buffer and safety zones for each type of loud in-water construction activity (e.g., impact hammer, vibratory hammer), different hammer sizes and types of piles (e.g., hollow steel, wood). Alternatively, the Monterey County DPW can conduct underwater measurements of the loudest in-water activity (presumably the largest impact hammer) and use those measurements to establish conservative buffer and safety zones for pinnipeds.

Comment 5: Monterey County DPW requests that the IHA have a delayed effectiveness until April 15, 2005, when out-of-water construction work is scheduled to start.

Response: NMFS agrees. Early issuance of an IHA with a delayed effectiveness date allows a Holder of an IHA time to incorporate marine mammal mitigation measures into work contracts and to establish the marine mammal monitoring program.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the habitat and its associated marine mammals affected by the proposed Bridge replacement project can be found in the CALTRANS application and in Monterey County DPW Marine Mammal and Bird Mitigation Plan (CALTRANS, 2004). Harbor seals routinely move between the Old Salinas River, beneath and south of the existing Bridge, and the

adjoining Moss Landing Harbor, on the north side of the site. Approximately 35 individuals are known to haul out along the Old Salinas River approximately 500 to 800 m (1640 to 2625 ft) south of the current Bridge location, with more seals generally found at about 800 m (2625 ft) or more south of the Bridge. California sea lions only occasionally transit through the project area, but are not known to haul-out in the area.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Carretta *et al.* (2002, 2003), which are available at the following URL: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html. Please refer to these documents for information on these species. The marine mammals likely to be affected by work in the Bridge area are limited to harbor seals and California sea lions. The harbor seal and California sea lion are the only marine mammal species expected to be found regularly in the Bridge area and are described in detail below.

Harbor Seals

The California stock of harbor seals is comprised of those seals found at the 400 to 500 haul-out sites along the mainland coast and offshore islands of California. Based on the most recent counts, the California stock of the Pacific harbor seal is estimated at 27,863 (Carretta *et al.*, 2003). A rapid increase in harbor seal abundance was recorded from 1972 to 1990, but there has been no net growth along the mainland or Channel Islands since 1990. The annual growth rate estimate is 3.5 percent, however, the current rate of reproduction is greater than this observed rate because fishery mortality takes a fraction of the net production (Carretta *et al.*, 2003).

Harbor seals are considered non-migratory, generally making local movements in association with the distribution of food resources, tides, weather, season and breeding activities (Bigg, 1973, 1981; Stewart and Yochem, 1994). Harbor seals are found in estuaries and marine embayments, and typically rest ashore or haul out on beaches and tidal-inundated habitats such as mudflats, marshes, and near-shore rocky outcroppings (Kopce and Harvey, 1995; Zeiner *et al.*, 1990). They often use these isolated, undisturbed sites for pupping, molting, and resting.

Harbor seals are very skittish by nature, and a startle response in harbor seals can vary from a temporary state of

agitation by a few individuals to the permanent abandonment of the haul-out site by the entire colony. Normally, when harbor seals are frightened by a noise, the approach of a boat, plane, human, predator, or another seal, for example, they will move rapidly to the water or flush. Disturbances have the potential to cause a more serious effect during pupping or nursing, or when aggregations are dense during the molting season, as mothers may become separated from their pups or individuals may be injured.

Harbor seals feed opportunistically on a variety of fish, crustaceans, and cephalopods (Zeiner *et al.*, 1990). Harbor seals are year-round residents in the Monterey Bay area and, contrary to the trend noted above for the stock as a whole, Hanan *et al.* (1992), as reported in Harvey (2003), report that the Monterey Bay population is increasing at an annual rate of approximately 7.7 percent. Within the Monterey Bay area, there are numerous haul-out sites. Several locations in Elkhorn Slough are of particular importance, as they provide the gently-sloped, isolated, undisturbed conditions critical to harbor seals. Within the Sandholdt Road Bridge Replacement project vicinity, harbor seals are known to routinely haul out at a recently established site, located approximately 800 m (2625 ft) south of the Bridge, along the Old Salinas River. This is not a location typically used by harbor seals for pupping and nursing, and although such activities could occur at the site, it is considered a rare event. Harbor seals may use the Old Salinas River haul out during the molting season, but it is presumed that long-established alternative sites in this region (i.e. along Elkhorn Slough) are more preferable to seals during these sensitive time periods. Bridge construction may temporarily restrict a small number of harbor seals from using this haul-out site during the construction period.

California Sea Lions

The geographic range of the U.S. stock of the California sea lion extends from the U.S./Mexico border north into Canada. Breeding occurs only in the Gulf of California, western Baja California, and southern California. Population estimates for this stock range from 244,000 to 237,000. The minimum population size is based on counts of all age and sex classes that were ashore at all major rookeries and haul-out sites during the 2001 breeding season, the number of births estimated from the pup count, and the proportion of the pups in the population. Current trends indicate that the stock as a whole has been

growing at a rate of 5.4 to 6.1 percent per year (Carretta *et al.*, 2003). The Monterey Bay population is reported to be increasing at a slightly higher rate of 6 to 8 percent (Harvey, 2003).

California sea lions are the most abundant pinniped in the Monterey Bay region, with the highest numbers occurring during the spring and fall migrations (MBA, 1999). At least 12,000 California sea lions may be present within the entire Monterey Bay National Marine Sanctuary at any one time (Harvey, 2003), although only a few individuals are typically present within the Moss Landing Harbor-Sandholdt Road Bridge Project area (S. Dearn pers. comm.). Most of the sea lions within the region are males of varying age classes that arrive in early fall from their southern breeding grounds (MBA, 1999). Many individuals remain over the course of the winter until the following spring, with just a few sea lions staying through the summer. There are no breeding areas for the California sea lion located in the Monterey Bay area, and most individuals migrate to offshore breeding sites in southern California and Mexico.

Potential Effects on Marine Mammals

The impact to harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. The crane used to construct the access trestle will generate a moderate degree of noise (similar to that of a diesel truck). Pile driving will be noisier and will also cause ground vibrations. Vibratory hammers usually create less noise than pile driving, but noise will also be created by rock drills, other tools and also several of the vehicles commonly used on construction sites. The pile drivers planned for use at the Bridge have energy levels of approximately 16–24 kilojoules (kJ). This is significantly less energy than either of the pile drivers being used on the San Francisco-Oakland Bay Bridge (SF-OBB) (see 68 FR 64595, November 14, 2003), which are 500 kJ and 1700 kJ. As a result, airborne and underwater impact zones for marine mammals (and other estuarine life) will be significantly smaller than at SF-OBB. At a distance of 50 ft (15.2 m) from the specific activity, CALTRANS believes airborne noise levels from the pile driver (and other construction equipment) will not exceed 100 dBA and most sounds will be 90 dBA or lower at that distance. Previously, NMFS has determined that sound exposure levels (SELs) of 100 dBA and 90 dBA (re 20 micro-Pa²-sec) or greater are the levels where California sea lions

(and northern elephant seals) and Pacific harbor seals, respectively, will sometimes be harassed. Pinnipeds inside these airborne SEL isopleths at the time of pile driving and other equipment activity are presumed to be harassed, whether or not an actual behavioral disturbance occurs. NMFS does not believe that any airborne sounds from the Bridge construction site are sufficient to cause Level A harassment (injury or potential therefor). However, harbor seals and possibly some California sea lions may be disturbed on a daily basis as they are moving within the area and harbor seals are transiting to and from the haul-out site located about 500–800 m (1640 to 2625 ft) south of the Bridge site. Moreover, due to the distance between the construction site and the haul-out, no harbor seals are expected to be disturbed sufficiently to cause them to flush from the haul-out.

In addition to airborne sounds, loud underwater sounds, such as those produced by in-water pile driving, can have detrimental effects on marine mammals, causing stress, changes in behavior, and interference with communication and predator/prey detection. The most significant detrimental effect that loud underwater noises can have on marine mammals is a temporary or permanent loss of hearing.

Based on studies, previous pile-driving projects, consultation with experts, and review of the literature, NMFS has determined that marine mammals may exhibit behavioral changes when exposed to underwater impulse SPLs of 160 dB re 1 μ Pa (rms). In addition, current NMFS policy is that underwater SPLs at 190 dB re 1 micro-Pa RMS (impulse) and above could cause temporary or permanent hearing impairment in harbor seals and sea lions and therefore, activities should be designed to ensure, to the greatest extent practicable, that pinnipeds are not exposed to SPLs greater than 190 dB re 1 μ Pa rms.

While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to be Level B harassment in this situation. During the in-water work period (June through October), the incidental harassment of harbor seals is expected to occur on a daily basis upon initiation of the work. During the out-of-water work period, incidental harassment of harbor seals is expected to occur less frequently than what is expected for in-water construction activities. In addition, the number of seals disturbed will vary daily

depending upon tidal elevations. Although California sea lions have been shown to react to pile driving noise by porpoising quickly away from other bridge construction sites (SRS Technologies, 2001), it is not known whether they will react to general construction noise and move away from the area during construction activities. However, sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected. However, Level B harassment of California sea lions may occur on rare occasions during the in-water work and out-of-water work periods.

However, disturbance from these activities is expected to have no more than a short-term negligible impact on the affected species or stocks and will result in harassment takes of small numbers of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the work restrictions and mitigation measures (see Mitigation).

Potential Effects on Habitat

The activities are expected to result in a temporary reduction in utilization of the Old Salinas River haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at the Old Salinas River haul out. Permanent abandonment of the haul-out site is not anticipated since traffic noise from the Bridge, commercial activities along the river front area, and recreational boating that currently occurs within the area have not caused long-term abandonment. In addition, mitigation measures and work restrictions are designed to preclude abandonment. Therefore, as described in detail in the CALTRANS (2004), other than the potential short-term abandonment by harbor seals of part or all of the Old Salinas River haul-out site during Bridge construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Among other local, state and Federal requirements, the Monterey County DPW marine mammal (and bird) mitigation plan was prepared to comply with condition 8 of the Monterey County Coastal Development Permit and the CCC CDP. The access trestle and falsework piles will be located such that they do not pose more of a barrier to marine mammals than do the support structures for the existing Bridge. In

addition, construction barges and/or other in-water support construction equipment will be located in an area that would not restrict the movements of harbor seals or California sea lions through the work area.

To minimize underwater noise levels, the loudest pile-driving activities will be restricted to low-water periods. The loudest in-water noise levels are expected to occur during pile driving of the 6 large CISS piles with an impact hammer (driving steel piles is much louder than driving wooden piles, and an impact hammer is much louder than a vibratory hammer). As a result, the following mitigation measures will apply to pile driving: (1) for the two CISS piles in the deeper channel area, the impact hammer will not be used when water depth is more than 5 ft (1.5 m); and (2) for the other 4 CISS piles, the impact hammer will be used when the water depth is more than 3 ft (1 m).

Several mitigation measures to reduce the potential for general noise have been implemented by the Monterey County DPW as part of their activity. General restrictions include: piles will only be driven during daylight hours and all in-water support equipment will be located so as not to restrict marine mammal movement.

To minimize potential harassment of marine mammals to the lowest level practicable, the following mitigation measures are also required: (1) limit all in-water construction activity (as described in the Marine Mammal and Bird Mitigation Plan (Monterey County DPW, 2004)) to the period from June 1 through October 31, and (2) minimize Bridge construction-related vessel traffic to the greatest extent practicable in the in-water buffer zone (described in the next paragraph) when conducting in-water construction activities and to the greatest extent practicable near the haul-out site.

Underwater sound measurements have not been made for the pile driving equipment planned for use at the Bridge. Until the distance at which underwater sound levels equal 160 db and 190 dB re 1 μ Pa rms can be determined and implemented, Monterey County DPW will establish a preliminary in-water marine mammal impact zone, delineated by a 500-ft (152-m) radius from the in-water construction activity. The preliminary in-water, 500-ft (152-m) impact zone will be clearly marked by highly visible stakes securely placed on the banks.

Once pile-driving has started, a qualified underwater acoustic monitor will record SPLs from the pile driving to determine the distance to 160- and 190-dB re 1 μ Pa rms isopleths. When

these radii are established, they will replace the 500-ft (152-m) impact zone and will be used as the 160-dB pinniped buffer and 190-dB pinniped safety zones. This same procedure will be followed to establish the appropriate buffer and safety zones for each type of loud in-water construction activity (e.g., impact hammer, vibratory hammer), different hammer sizes and types of piles (e.g., hollow steel, wood). The 160-dB radius will be called the pinniped buffer zone and the 190-dB radius will be called the pinniped safety zone for the specific type of activity currently underway. Alternatively, under the IHA, the Monterey County DPW can conduct underwater measurements of only the loudest in-water activity (presumably the largest impact hammer) and use those measurements to establish conservative buffer and safety zones for pinnipeds. The new safety zones will be clearly marked by highly visible stakes and the stakes delineating the initial 500-ft (152-m) impact zone will be removed.

Each day, before pile-driving (or other loud in-water construction activity) begins, the marine mammal monitor will survey the appropriate impact, buffer and/or safety zones for harbor seals and California sea lions. If any pinnipeds are sighted within the impact or safety zones, the monitor will require the contractor to delay pile-driving until the monitor determines that the marine mammal(s) has moved beyond the impact or safety zone, either through sighting or by waiting until enough time has elapsed (about 15 minutes) to assume that the animal has moved beyond the safety zone. However, once pile driving has begun, that individual pile can be driven to depth without cessation notwithstanding any pinniped presence.

Other in-water and out-of-water construction activities not related to pile driving, such as the use of heavy equipment to place embankment earthwork and rock slope protection, construct bridge abutments and the superstructure, and complete the roadway and embankment structural section (*i.e.*, activities not involving loud, impulsive hammering sounds), will generate noise levels equivalent to that of a diesel truck. For these activities, a 50-ft (15.2-m) radius impact zone will be established if that radius extends into the water. This pinniped impact zone will be clearly marked by highly visible stakes securely placed into the banks.

Each day before non-pile driving construction begins, the monitor will search the 50-ft (15.2-m) impact zone for marine mammals. If a marine

mammal is sighted within the impact zone, the monitor will require the contractor to delay in-water or out-of-water construction activities until the monitor determines that no marine mammals are present within the impact zone.

Monitoring

In addition to monitoring and recording behavioral responses within the 50-ft (15.2-m) pinniped impact zone, the preliminary 500-ft (152-m) pinniped impact zone, and the buffer and safety zones, NMFS is requiring the Monterey County DPW to monitor the impact of Bridge replacement construction activities on harbor seals (and California sea lions, if present) at the Old Salinas River haul-out site. In addition to specific monitoring tasks mentioned herein, all biological monitor(s) will record general construction activity (including all equipment being used), location, duration, and standardized noise levels for the construction equipment.

Monitoring will be divided into the in-water and out-of-water construction periods. Monitoring will be conducted every day during in-water construction activities and for an 8-hour period once a week during out-of-water activities, by at least one trained, NMFS-approved, biological monitor. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of females and males; (7) number of molting seals; and (8) details of any observed disturbances. The monitor(s) will conduct baseline observations of pinniped behavior at the Old Salinas River haul-out site, once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. In addition, NMFS requires that, immediately following the completion of the construction of the Bridge, the monitor(s) will conduct observations of pinniped behavior at the Old Salinas River haul out, for at least 5 consecutive days for approximately 1 tidal cycle (high tide to high tide) each day.

Reporting

NMFS will be notified in writing within 10 working days of any changes to the impact, buffer and safety zones due to completion and analysis of the SPL measurements.

The Monterey County DPW will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's

monitoring activities and an estimate of the number of pinnipeds that may have been disturbed as a result of Bridge replacement construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, and any observed disturbances. The Monterey County DPW will also provide a description of construction activities at the time of observation and any SPL measurements made at the haulout site. The Monterey County DPW must submit draft final reports to NMFS within 90 days of completion of the 2005 in-water work phase and the 2005/2006 out-of-water work phase. The draft interim reports are considered final reports unless NMFS requests modifications to those reports within 90 days of receipt. The Monterey County DPW will also provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-Bridge replacement haul-out patterns at the Old Salinas River site.

Endangered Species Act (ESA)

NMFS has determined that this action will have no effect on species listed under the ESA that are under the jurisdiction of NMFS. On April 12, 2000, the U.S. Fish and Wildlife Service (USFWS) concurred with the determination of the FHWA that the proposed Bridge project was not likely to adversely affect the federally endangered goby (*Eucyclogobius newberryi*), the brown pelican (*Pelecanus occidentalis*) and southern sea otter (*Enhydra lutris nereis*). However, issuance of an IHA to the Monterey County DPW also constitutes an agency action subject to section 7 of the ESA. As the effects of the Bridge activities on listed species were analyzed earlier, and as the action has not changed from that considered in that informal consultation, the discussion of effects that is contained in the April 12, 2000 concurrence letter from the USFWS to the FHWA pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

National Environmental Policy Act (NEPA)

NMFS has prepared an Environmental Assessment (EA) on this action and has made a Finding of No Significant Impact (FONSI). Therefore, preparation of an

environmental impact statement on this action is not required. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the Bridge replacement, as described in this document, should result, at worst, in the temporary modification in behavior of small numbers of harbor seals and, possibly, of small numbers of California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the affected species and stocks of pinnipeds. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Authorization

For the reasons previously discussed, NMFS has issued an IHA for a 1-year period, for the incidental harassment of small numbers of harbor seals and California sea lions incidental to Bridge replacement construction, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: December 27, 2004.

Donna Wieting,

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

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DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 7, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or