(iv) Take incidental to an otherwise lawful activity caused by:

(A) Native habitat restoration activities, inclusive of invasive and/or nonnative species removal, conducted by a conservation organization pursuant to a Service-approved management or restoration plan.

(B) Fire-hazard reduction activities implemented by the California Department of Forestry and Fire Protection in accordance with a Service-approved plan within the range of the Morro shoulderband snail.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 200706–0180]

RIN 0648–BJ47

Take of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Point Blue Conservation Science (Point Blue) for authorization to take marine mammals incidental to seabird research activities in central California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than August 24, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0076, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0076,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Availability

A copy of Point Blue's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to Point Blue's seabird research activities in central California.

We received an application from Point Blue requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to visual disturbance of pinnipeds during research activities and use of research equipment. Please see Background below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs 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 for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the *Proposed Mitigation* section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Point Blue's seabird research activities. These measures include:

- Required implementation of mitigation to minimize impact to pinnipeds including several measures to approach haulouts cautiously to minimize disturbance, and avoiding surveying when pups are present.
- Required monitoring of the research areas to detect the presence of marine mammals before initiating surveys.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) 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, regulations are issued, and notice is provided to the public.

Authorization for incidental takings 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 taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to, in shorthand, as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of a proposed rule (and subsequent LOAs)) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations (IHAs) with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed rule qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this proposed rule prior to concluding our NEPA process or making a final decision on the request.

Summary of Request

On September 17, 2019, NMFS received a request from Point Blue for a proposed rule and LOA to take marine mammals incidental to seabird research activities on the central California coast. We determined the application was adequate and complete on November 26, 2019. Point Blue's request is for take of a small number of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina richardii*), northern elephant seals (*Mirounga angustirostris*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus philippii townsendi*), and Steller sea lions (*Eumetopias jubatus*), by Level B harassment only. Neither Point Blue nor NMFS expects serious injury or mortality, or Level A harassment, to result from this activity.

NMFS has previously issued ten Incidental Harassment Authorizations (IHAs) to Point Blue for similar work from 2006 through 2020 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; 80 FR 80321, December 24, 2015; 81 FR 34978, June 1, 2016; 82 FR 31759, July 7, 2017; 83 FR 31372, July 5, 2018; 85 FR 9740, February 20, 2020). Point Blue complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the *Potential Effects of the Specified Activity on Marine Mammals and their Habitat* and *Estimated Take* sections.

Description of Proposed Activity

Overview

Point Blue, along with their research partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore have been conducting seabird research in central California for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. Point Blue conducts research activities on Southeast Farallon Island (SEFI), Año Nuevo Island (ANI), and Point Reyes National Seashore (PRNS). Research activities include monitoring and censusing seabird colonies, observing seabird nesting habitat, restoring nesting burrows, and resupplying a field station at SEFI. Research is conducted throughout the year at each of the research sites. Researchers accessing and conducting research activities on the sites may occasionally cause behavioral disturbance (or Level B harassment) of six pinniped species. Point Blue expects that the disturbance to pinnipeds from the research activities will be minimal and will be limited to Level B harassment.

Dates and Duration

Point Blue's research is conducted throughout the year. At SEFI, seabird monitoring sites are visited 1–3 times per day for a maximum of 500 visits per year. Boat landings to re-supply the field station, lasting 1–3 hours, are conducted once every two weeks. At ANI, research is conducted approximately once a week from April-August, with occasional intermittent visits made during the rest of the year. The maximum number of visits per year would be 20. Research at PRNS is conducted year round, with an emphasis during the seabird nesting season, and with occasional intermittent visits the rest of the year. The maximum number of visits per year is 20. A component of the seabird research involves habitat restoration and monitoring which requires sporadic visits from September-November, the time period between the seabird breeding season and the elephant seal pupping season.

Specific Geographic Region

Point Blue will conduct their research activities within the vicinity of pinniped haul-out sites in the following locations:

- *South Farallon Islands:* The South Farallon Islands consist of SEFI, located at 37°41′54.32″ N; 123°0′8.33″ W, and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km^2)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, California, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary;
- *Año Nuevo Island:* ANI is located at 37°6′29.25″ N; 122°20′12.20″ W, one-quarter mile (402 meters m) offshore of Año Nuevo Point in San Mateo County, California. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area; and
- *Point Reyes National Seashore:* PRNS is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

Detailed Description of Specific Activity

Southeast Farallon Islands

Point Blue has conducted year round wildlife research and monitoring activities at SEFI, part of the Farallon National Wildlife Refuge, since 1968. This work is conducted through a collaborative agreement with the USFWS. Research focuses on marine

mammals and seabirds and includes procedures involved in maintaining the SEFI field station. These activities may involve the incidental take of marine mammals.

Seabird research activities involve observational and marking (*i.e.,* netting and banding for capture-mark-recapture) studies of breeding seabirds. Occasionally researchers may travel to coastal areas of the island to conduct observational seabird research, which includes viewing breeding seabirds from an observation blind or censusing shorebirds, and usually involves one or two observers. Access to the refuge involves landing in small boats, 14–18 foot (ft) open motorboats, which are hoisted onto the island using a derrick system.

Most intertidal areas of the island, where marine mammals are present, are rarely visited in seabird research. Most potential for incidental take will occur at the island's two landings, North Landing and East Landing. These sites are visited by researchers 1–3 times per day for a maximum of 500 visits per year. At both landings, research stations are located more than 50 ft above any pinnipeds that may be present. Most visits to these areas are brief (~15 minutes), though seabird observers are present for 2–5 hours daily at North Landing from early April to early August each year to conduct observational studies on breeding common murres (*Uria aalge*). Boat landings to re-supply the field station, lasting 1–3 hours, are conducted once every 2 weeks at either North Landing or East Landing. Activities involve launching of the boat with one operator, with 2–4 other researchers assisting with the operations from land. At East Landing, the primary landing site, all personnel assisting with the landing stay on the loading platform 30 ft above the water. At North Landing, loading operations occur at the water level in the intertidal zone.

Año Nuevo Island

Point Blue has also conducted seabird research and monitoring activities on ANI, part of the Año Nuevo State Reserve, since 1992. Collaborations with Oikonos Ecosystem Knowledge began in 2001 to research seabird burrow nesting habitat quality and restoration. All work is conducted through a collaborative agreement with California State Parks. Research at ANI is conducted year-round, with up to 20 visits per year. The island is accessed by a 12 ft Zodiac boat. Non-breeding pinnipeds may occasionally be present on the small beach in the center of the island where the boat is landed. There are usually 2–3 researchers involved in island visits. Most intertidal areas of the island where marine mammals are present are not ever visited during seabird research, except at the landing beach. Seabird nest boxes are located just north of the landing beach, up on the island's terrace, over 50 ft from hauled out pinnipeds. The landing beach is visited upon arrival and departure during the weekly visit, and seabird nest boxes are checked one time that day. Landings and visits to nest boxes are brief (~15 minutes).

Point Reyes National Seashore

Research at PRNS is conducted year-round, with up to 20 visits per year. The National Park Service (NPS) conducts research, resource management and routine maintenance services at PRNS. This involves both marine mammal research and seabird research and includes maintaining the facilities around the seashore. Habitat restoration of the seashore occurs and includes restoration and removal of non-native invasive plants and coastal dune habitat. Non-native plant removal is timed to avoid the breeding seasons of pinnipeds; however, on occasion non-breeding animals may be present at various beaches throughout the year.

Research along the seashore includes monitoring seabird breeding and roosting colonies. Seabird monitoring usually involves one or two observers. Surveys are conducted using 14–22-ft open motorboats that survey along the shoreline. Intermittent visits to areas of PRNS where pinniped takes may occur are also conducted for research on other species such as seabirds, sharks, and subtidal mapping, as well as resource management activities such as non-native plant management and intertidal monitoring.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see the *Proposed Mitigation* and *Proposed Monitoring and Reporting* sections).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence at survey sites in California, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow the Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2018 Pacific and Alaska Marine Mammal SARs (Carretta *et al.* 2019a; Muto *et al.,* 2019a) and draft U.S. 2019 Pacific and Alaska Marine Mammal SARs (Caretta *et al.,* 2019b; Muto *et al.,* 2019b). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-/-; N	257,606 (n/a; 233,515; 2014)	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-/-; N	43,201 (n/a; 43,201; 2017)	2,592	113
Northern fur seal	*Callorhinus ursinus*	California	-/-; N	14,050 (n/a; 7,524; 2013)	451	>0.8
		Eastern Pacific	-/D; Y	620,660 (0.2, 525,333, 2016)	11,295	399
Guadalupe fur seal	*Arctocephalus philippii townsendi.*	Mexico to California	T/D; Y	34,187 (n/a; 31,019; 2013)	1,062	>1.2
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	California	-/-; N	30,968 (n/a; 27,348; 2012)	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California	-/-; N	179,000 (n/a; 81,368; 2010)	4,882	8.8

1—Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2—NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

3—These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strikes). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All species that could potentially occur in the proposed survey areas are included in Table 1. Below, we describe all six species that temporally and spatially co-occur with the activity, as well as the degree that take is reasonably likely to occur, to the extent that we have proposed authorizing it. The southern sea otter (*Enhydra lutris nereis*) may be found at SEFI and ANI. However, they are managed by the USFWS and are not considered further in this document.

California Sea Lions

California sea lion breeding areas are on islands located in southern California, in western Baja California, Mexico, and the Gulf of California. Rookery sites in southern California are limited to the San Miguel Islands and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Carretta *et al.,* 2017). Males establish breeding territories during May through July on both land and in the water. Females come ashore in mid-May and June where they give birth to a single pup approximately four to five days after arrival and will nurse pups for about a week before going on their first feeding trip. Females will alternate feeding trips with nursing bouts until the pup is weaned between four and 10 months of age (NMML 2010).

Adult and juvenile males will migrate as far north as British Columbia, Canada while females and pups remain in southern California waters in the non-breeding season. In warm water (El Niño) years, some females are found as far north as Washington and Oregon, presumably following prey.

On the Farallon Islands, California sea lions haul out in many intertidal areas year round, fluctuating from several hundred to several thousand animals. California sea lions at PRNS haul out at only a few locations, but will occur on human structures such as boat ramps. The annual population averages around 300 to 500 during the fall through spring months, although on occasion, several thousand sea lions can arrive depending upon local prey resources (S. Allen, unpublished data). On ANI, California sea lions may haul out at one of eight beach areas on the perimeter of the island. The island's average population ranges from 4,000 to 9,500 animals (M. Lowry, unpublished data).

Elevated numbers of strandings of California sea lion pups occurred in Southern California beginning in January 2013, and NMFS declared an Unusual Mortality Event (UME). The UME was confined to pup and yearling California sea lions, many of which were emaciated, dehydrated, and underweight for their age. A change in the availability of sea lion prey, especially sardines, a high value food source for nursing mothers, was a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012 and 2013, and, while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicated that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing mothers. Current evidence does not indicate that this UME was caused by a single infectious agent, though a variety of disease-causing bacteria and viruses were found in samples from sea lion pups. Investigating and identifying the cause of this UME is a true public-private effort with many collaborators. The investigative team examined multiple potential explanations for the high numbers of malnourished California sea lion pups observed on the island rookeries and stranded on the mainland in 2013. For more information, see *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california.*

Steller Sea Lion

Steller sea lions consist of two distinct population segments (DPSs): The western and eastern DPSs divided at 144° W longitude (Cape Suckling, Alaska). The western segment of Steller sea lions inhabits central and western Gulf of Alaska, Aleutian Islands, as well as coastal waters, and breed in Asia (*e.g.,* Japan and Russia). The eastern DPS includes animals born east of Cape Suckling, AK (144° W), and includes sea lions living in southeast Alaska, British Columbia, Washington, Oregon, and California.

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).

An estimated 50–150 Steller sea lions are located along the Farallon Islands while 400–600 may be found on ANI (Point Blue, unpublished data; Lowry, unpublished data). Steller sea lions are not typically present at PRNS (NPS, unpublished data). Overall, counts of non-pups at trend sites in California and Oregon have been relatively stable or increasing slowly since the 1980s (Muto *et al.,* 2017). SEFI is one of two breeding colonies at the southern end of the Steller sea lion's range. On the Farallon and Año Nuevo Islands, Steller sea lion breeding colonies are located in closed areas where researchers never visit, eliminating any risk of disturbing breeding animals.

Northern Fur Seal

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Sea of Okhotsk, and Sea of Japan (Jefferson *et al.,* 2015). Two stocks are recognized in U.S. waters: the Eastern North Pacific and the California stocks. The Eastern Pacific stock ranges from southern California during winter to the Pribilof Islands and Bogoslof Island in the Bering Sea during summer (Carretta *et al.,* 2018; Muto *et al.,* 2018). The California stock originated with immigrants from the Pribilof Islands and Russian populations that recolonized San Miguel Island during the late 1950s or early 1960s after northern fur seals were extirpated from California in the 1700s and 1800s (DeLong 1982). Most northern fur seals at Point Blue research sites are expected to be from the California stock, though some may be from the Eastern North Pacific stock, as adult females and pups from the Pribilof Islands move through the Aleutian Islands into waters off of Oregon and California (Muto *et al.,* 2019b).

The northern fur seal spends ~90 percent of its time at sea, typically in areas of upwelling along the continental slopes and over seamounts (Gentry 1981). The remainder of its life is spent on or near rookery islands or haulouts. While at sea, northern fur seals usually occur singly or in pairs, although larger groups can form in waters rich with prey (Antonelis and Fiscus 1980; Gentry 1981). Northern fur seals dive to relatively shallow depths to feed: 100–200 m for females, and <400 m for males (Gentry 2009). Tagged adult female fur seals were shown to remain within 200 km of the shelf break (Pelland *et al.* 2014).

Northern fur seals likely numbered in excess of 100,000 animals at the Farallon Islands before being locally extirpated by sealers in the 1800's (Townsend 1931; Scheffer and Kraus 1964). After more than a 150-year absence, northern fur seals recolonized the Farallon Islands in the 1970's and the first confirmed pup was born in 1996 (Pyle *et al.,* 2001). The Farallon Islands continue to be a breeding site for northern fur seals, with over 1,000 pups born each season (Point Blue, unpublished data). Fur seals in the Farallon Islands typically begin pupping in mid-July with peak population and pup production in late-August to early-September.

Guadalupe Fur Seal

Guadalupe fur seals were once plentiful on the California coast, ranging from the Gulf of the Farallones near San Francisco, to the Revillagigedo Islands, Mexico (Aurioles-Gamboa *et al.,* 1999), but they were over-harvested in the 19th century to near extinction. After being protected, the population grew slowly; mature individuals of the species were observed occasionally in the Southern California Bight starting in the 1960s (Stewart *et al.,* 1993), and, in 1997, a female and pup were observed on San Miguel Island (Melin & DeLong, 1999). Since 2008, individual adult females, subadult males, and between one and three pups have been observed annually on San Miguel Island (Caretta *et al.,* 2017).

During the summer breeding season, most adults occur at rookeries in Mexico (Caretta *et al.,* 2019; Norris 2017 in U.S. Navy 2019). Following the breeding season, adult males tend to move northward to forage. Females have been observed feeding south of Guadalupe Island, making an average round trip of 2,375 km (Ronald and Gots 2003). Several rehabilitated Guadalupe fur seals that were satellite tagged and released in central California traveled as far north as British Columbia (Norris *et al.,* 2015; Norris 2017 in U.S. Navy 2019). Guadalupe fur seals are not typically observed at Point Blue research sites, but they have occasionally been seen at the Farallon Islands in the last decade.

Increased strandings of Guadalupe fur seals have occurred along the entire coast of California. Guadalupe fur seal strandings began in January 2015 and were eight times higher than the historical average. Strandings have continued since 2015 and have remained well above average through 2019. Strandings are seasonal and generally peak in April through June of each year. Strandings in Oregon and Washington became elevated starting in 2019 and have continued to present. Strandings in these two states in 2019 are five times higher than the historical average. Guadalupe fur seals have stranded alive and dead. Those stranding are mostly weaned pups and juveniles (1–2 years old). The majority of stranded animals showed signs of malnutrition with secondary bacterial and parasitic infections. NMFS has declared a UME for Guadalupe fur seals along the entire U.S. West Coast; the UME is ongoing and NMFS is continuing to investigate the cause(s). For additional information on the UME, see *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2020-guadalupe-fur-seal-unusual-mortality-event-california.*

Northern Elephant Seal

Northern elephant seals range in the eastern and central North Pacific Ocean, from as far north as Alaska to as far south as Mexico. Northern elephant seals spend much of the year, generally about nine months, in the ocean. They are usually underwater, diving to depths of about 1,000 to 2,500 ft (330–800 m) for 20- to 30-minute intervals with only short breaks at the surface. They are rarely seen out at sea for this reason. While on land, they prefer sandy beaches.

The northern elephant seal breeding population is distributed from central Baja California, Mexico to the Point Reyes Peninsula in northern California. Along this coastline, there are 13 major breeding colonies. Northern elephant seals breed and give birth primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed farther south, south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993).

In mid-December, adult males begin arriving at rookeries, closely followed by pregnant females on the verge of giving birth. Females give birth to a single pup, generally in late December or January (Le Boeuf and Laws, 1994) and nurse their pups for approximately four weeks (Reiter *et al.,* 1991). Upon pup weaning, females mate with an adult male and then depart the islands. The last adult breeders depart the islands in mid-March. The spring peak of elephant seals on the rookery occurs

in April, when females and immature seals (approximately one to four years old) arrive at the colony to molt (a one-month process) (USFWS 2013). The year's new pups remain on the island throughout both of these peaks, generally leaving by the end of April (USFWS 2013). The lowest numbers of elephant seals present at rookeries occurs during June, July, and August, when sub-adult and adult males molt. Another peak number of young seals returns to the rookery for a haul-out period in October, and at that time some individuals undergo partial molt (Le Boeuf and Laws, 1994).

Northern elephant seals are present on the islands and in the waters surrounding the South Farallones year-round for either breeding or molting; however, they are more abundant during breeding and peak molting seasons (Le Boeuf and Laws, 1994; Sydeman and Allen, 1999). Northern elephant seals began recolonizing the South Farallon Islands in the early 1970s (Stewart *et al.,* 1994) at which time the colony grew rapidly. Point Blue's average monthly counts of elephant seals at SEFI from 2000 to 2009 ranged from 20 individuals in July to nearly 500 individuals in November (USFWS 2013). During breeding season, the population at ANI ranges from 900 to 1,000 adults, while another ~2,000 adults are found at PRNS (Mark Lowry, unpublished data; NPS, unpublished data).

Pacific Harbor Seal

Pacific harbor seals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They are divided into two subspecies: *P.* v. *stejnegeri* in the western North Pacific, near Japan, and *P.* v. *richardii* in the northeast Pacific Ocean. The latter subspecies occurs along the California coast. The California stock of harbor seals ranges from Mexico to the Oregon-California border. In California, 400–600 harbor seal haul-out sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.,* 2008).

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. Pupping generally occurs between March and June, and molting occurs between May and July.

On the Farallon Islands, approximately 40 to 120 Pacific harbor seals haul out in the intertidal areas (Point Blue, unpublished data). Harbor seals at PRNS haul out at nine locations with an annual population of up to 4,000 animals (M. Lowry, unpublished data). On ANI, harbor seals may haul out at one of eight beach areas on the perimeter of the island, and the island's average population ranges from 100 to 150 animals (M. Lowry, unpublished data).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take* section, and the *Proposed Mitigation* section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Visual and acoustic stimuli generated by the appearance of researchers and motorboat operations may have the potential to cause Level B harassment of pinnipeds hauled out on SEFI, ANI, or PRNS. This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.,* personnel presence and motorboats) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take. This section provides background information on potential effects of these activities. For a discussion of the manner in which the mitigation measures will be implemented, and how the mitigation measures will shape the anticipated impacts from this specific activity, see the *Proposed Mitigation* section below.

The appearance of researchers may have the potential to cause Level B behavioral harassment of any pinnipeds hauled out at research sites. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (*e.g.,* turning the head, assuming a more upright posture) to flushing from the haulout site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that flee some distance or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking (see below). Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Southall *et al.,* 2007; Weilgart 2007). These behavioral reactions from marine mammals are often shown as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle responses or aggressive behavior; avoidance of areas; and/or flight responses (*e.g.,* pinnipeds flushing into the water from haulouts or rookeries). If a marine mammal does react briefly to human presence by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart, 2007). Numerous studies have shown that human activity can flush harbor seals off haul-out sites (Allen *et al.,* 1985; Calambokidis *et al.,* 1991; Suryan and Harvey, 1999). The Hawaiian monk seal (*Neomonachus schauinslandi*) has been shown to avoid beaches that have been disturbed often by humans (Kenyon 1972). In one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon 1962).

In cases where vessels actively approached marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Acevedo, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval, disruption of normal social behaviors (Lusseau 2003; 2006), and the

shift of behavioral activities that may increase energetic costs (Constantine *et al.,* 2003).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.,* kayaks, canoes, motorboats and sailboats) on harbor seal haul-out behavior in Metis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks, and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high-speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks and canoes, which approach slowly, quietly, and low on the water making them look like predators. However, the authors note that, once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels had only a temporary effect on the haul-out behavior of harbor seals in the Metis Bay area.

In 2004, Acevedo-Gutierrez and Johnson (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haul-out sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haul-out sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances that were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) away, respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that, on average, the seals quickly recovered from the disturbances and returned to the haul-out site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels referenced to 20 microPascals (µPa)) airborne non-pulsed sounds often leave haul-out areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.,* 2007).

The potential for striking marine mammals is a concern with vessel traffic. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Point Blue's researchers will access areas at slow transit speeds in small boats that are easily maneuverable, minimizing any chance of an accidental strike.

There are other ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. They are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. These situations are: (1) Falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of pups by larger animals during a stampede. However, NMFS does not expect any of these scenarios to occur at SEFI, ANI, or PRNS. There is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.,* cliffs). Researchers will take precautions, such as moving slowly and staying close to the ground, to ensure that flushes do not result in a stampede of pinnipeds heading to the sea. Point Blue reports that stampedes are extremely rare at their survey locations. Furthermore, no research activities would occur at or near pinniped rookeries. Breeding animals are concentrated in areas where researchers would not visit, so NMFS does not expect mother and pup separation or crushing of pups during flushing. Furthermore, if pups should be present at any Point Blue research sites, researchers will avoid visiting that particular site.

Given the nature of the proposed activities (*i.e.* animal observations from a distance and limited motorboat operations) in conjunction with proposed mitigation measures, NMFS is confident that any anticipated effects would be in the form of behavioral disturbance only. NMFS considers the risk of injury, serious injury, or mortality to marine mammals to be very low.

There are no habitat modifications associated with the proposed activity other than the presence of existing observation blinds by researchers to monitor animals. These blinds disturb only a few square feet of habitat. The presence of the blinds will likely result in a net decrease in disturbance since the researchers will only be visible briefly as they enter and exit the blind. Thus, NMFS does not expect that the proposed activity would have any effects on marine mammal habitat and NMFS expects that there will be no long- or short-term physical impacts to pinniped habitat on SEFI, ANI, or PRNS.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this LOA, and this estimate will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to researchers. Based on the nature of the activity and required mitigation, no Level A harassment, serious injury, or mortality is anticipated or proposed to be authorized. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Marine Mammal Occurrence and Take Calculation and Estimation

Take estimates are based on take reported by Point Blue in the last five years (Table 2). Point Blue's requested annual take was calculated as the maximum annual recorded take for each species over the last five years with a 10 percent increase (to account for potential population growth over the course of the five-year authorization), or the authorized take from the most recent IHA, whichever was greater.

Take of northern fur seals and Guadalupe fur seals has not been authorized in Point Blue's past IHAs. However, the northern fur seal colony in the Farallon Islands is expanding, and northern fur seals are beginning to haul out in areas that are regularly visited by researchers and in areas that are critical for access to the island. There is also some potential for Guadalupe fur seals to be present at the Farallon Islands, though they are not expected to occur as frequently as northern fur seals. Therefore, Point Blue has requested 20 annual takes by Level B harassment of northern fur seals and 5 annual takes by Level B harassment of Guadalupe fur seals, and NMFS proposes to authorize this amount.

TABLE 2—REPORTED TAKE OBSERVATIONS FROM PREVIOUS IHAS, AND REQUESTED ANNUAL TAKES BY LEVEL B HARASSMENT

Species	Reported take observations for all activities					Authorized takes from most recent IHA	Total requested annual takes by Level B harassment
	2014	2015	2016	2017	2018		
California sea lion	10,048	36,417	23,173	22,752	17,487	32,623	40,059
Northern elephant seal	145	175	119	202	85	239	239
Pacific harbor seal	284	292	175	234	229	304	321
Steller sea lion	59	31	32	35	5	43	65
Northern fur seal	0	0	0	0	0	0	20
Guadalupe fur seal	0	0	0	0	0	0	5

TABLE 3—PROPOSED TAKE BY LEVEL B HARASSMENT AND PERCENT OF MMPA STOCK PROPOSED TO BE TAKEN

Species	Stock	Proposed annual take by Level B harassment	Proposed total take by Level B harassment	Percent of Stock [1]
California sea lion	U.S	40,059	200,295	15.55
Northern elephant seal	California breeding	239	1,195	0.13
Pacific harbor seal	California	321	1,605	1.04
Steller sea lion	Eastern U.S.	65	325	0.15
Northern fur seal [2]	California	20	100	0.14
	Eastern Pacific			<0.01
Guadalupe fur seal	Mexico to California	5	25	0.01

[1] Reflects annual take number.
[2] As either stock may occur in the project area, for the purposes of calculating the percentage of the stock impacted, the take is being analyzed as if all proposed takes occurred within each stock.

Proposed Mitigation

In order to issue regulations and an LOA under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities, Point Blue will implement the following mitigation measures:

- Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;
- Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* if pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);
- Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds);
- Avoid visits to sites when pups are present or when species for which

authorization has not been granted are present;

- Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;
- Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;
- Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;
- Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view; and
- Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research activities for ANI to minimize the number of trips to the island.

Based on our evaluation of the applicant's proposed measures, and the proven efficacy and practicability of these mitigation measures in previous Point Blue incidental take authorizations, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue regulations and an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Required monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender, and life history stage (*e.g.,* adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 4. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 4—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information will be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1 through December 31 of each year of the authorization. Point Blue will submit annual report data on a calendar year schedule, regardless of the LOA's initiation or expiration dates. This ensures that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future incidental take authorizations regardless of the existing authorization's issuance date. Point Blue will submit a draft

monitoring report for the activities to NMFS Office of Protected Resources by April 1 of each year. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft monitoring report will be considered to be the final report. The final annual report after year five may be included as part of the final report (see below).

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office. In the event that personnel discovers an injured or dead marine mammal, Point Blue shall report the incident to the NMFS Office of Protected Resources, and the NMFS West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by Point Blue's activities, Point Blue must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. Point Blue must not resume their activities until notified by NMFS. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

A draft final report shall be submitted to the NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report shall be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of 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 harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance that would negatively impact an individual animal's fitness, or result in injury, serious injury, or mortality. Although Point Blue's survey activities may disturb marine mammals, NMFS expects those impacts to occur to localized groups of animals at or near survey sites. Behavioral disturbance would be limited to short-term startle responses and localized behavioral changes due to the short duration (ranging from <15 minutes for visits at most locations up to 2–5 hours from April-August at SEFI) of the research activities. At some locations, where resupply activities occur, visits will occur once every two weeks. Minor and brief responses including short-duration startle reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering. These short duration disturbances (in many cases animals will return in 30 minutes or less) will generally allow marine mammals to reoccupy haulouts relatively quickly; therefore, these disturbances would not be anticipated to result in long-term disruption of important behaviors. No surveys will occur at or near rookeries as researchers will have limited access to SEFI, ANI, and PRNS during the pupping season and will not approach sites should pups be observed. Furthermore, breeding animals tend to be concentrated in areas that researchers are not scheduled to visit. Therefore, NMFS does not expect mother and pup separation or crushing of pups during stampedes.

Level B behavioral harassment of pinnipeds may occur during the operation of small motorboats. However, exposure to boats and associated engine noise would be brief and would not occur on a frequent basis. Results from studies demonstrate that pinnipeds generally return to their sites and do not permanently abandon haul-out sites after exposure to motorboats (Henry and Hammil 2001; Johnson and Acevedo-Gutierrez 2007). The chance of a vessel strike is very low due to small boat size and slow transit speeds. Researchers will delay ingress into the landing areas until after the pinnipeds enter the water and will cautiously operate vessels at slow speeds.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment, is anticipated or authorized;
- There is no activity near rookeries and researchers will avoid areas where pups are present;
- There is likely to be limited impact from boats due to their small size, maneuverability and the requirement to delay ingress until after hauled out pinnipeds have entered the water;
- No impacts to pinniped habitat are anticipated; and
- Only limited behavioral disturbance in the form of short-duration startle reactions is expected, and mitigation requirements employed by researchers (*e.g.* move slowly, use hushed voices) should further decrease disturbance levels.

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 monitoring and mitigation measures, NMFS preliminarily finds

that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The annual amount of take NMFS proposes to authorize is less than one-third of any stock's best population estimate (Table 3), which NMFS considers to be small relative to stock abundance. In fact, for all species but California sea lions, the annual take by Level B harassment is less than 2 percent of stock abundance. Additionally, these are all likely conservative estimates because we assume all takes are of different individual animals which is likely not the case considering haulout site fidelity in pinnipeds.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species 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.

Adaptive Management

The regulations governing the take of marine mammals incidental to Point Blue's seabird research activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from Point Blue regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from Point Blue's monitoring from the previous year(s); (2) results from other marine mammal research or studies; and (3) any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

There is one marine mammal species (Guadalupe fur seal) listed under the ESA that is expected to be impacted by the proposed activities. The Permits and Conservation Division has requested initiation of section 7 consultation with the West Coast Region Protected Resources Division Office for the issuance of this LOA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Point Blue request and the proposed regulations (see ADDRESSES). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Point Blue is the sole entity that would be subject to the requirements in these proposed regulations, and Point Blue is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 8, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart M to part 217 to read as follows:

Subpart M—Taking Marine Mammals Incidental to Seabird Research Activities in Central California

Sec.

§ 217.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Point Blue Conservation Science (Point Blue) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occur incidental to seabird research activities.

(b) The taking of marine mammals by Point Blue may be authorized in a Letter of Authorization (LOA) only if it occurs in California on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore.

§ 217.121 Effective dates.

Regulations in this subpart are effective from January 1, 2021 through December 31, 2025.

§ 217.122 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.126, the Holder of the LOA (hereinafter ''Point Blue'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.120(b) by Level B harassment associated with seabird research activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.123 Prohibitions.

Notwithstanding takings contemplated in § 217.120 and authorized by a LOA issued under § 216.106 of this chapter and § 217.126, no person in connection with the activities described in § 217.120 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.126;

(b) Take any marine mammal not specified in such LOA;

(c) Take any marine mammal specified in such LOA in any manner other than as specified in § 217.122;

(d) Take a marine mammal specified in such LOA if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOA if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.124 Mitigation requirements.

When conducting the activities identified in § 217.120(a), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.126 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) All persons must slowly approach beaches for boat landings to avoid stampede, provide animals opportunity to enter the water, and avoid vessel strikes.

(2) All persons must observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* if pinnipeds are present, researchers must approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals).

(3) All persons must avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers must keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds).

(4) All persons must avoid visits to sites when pups are present or when species for which authorization has not been granted are present.

(5) All persons must monitor for offshore predators and must not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are observed to be present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the lead biologist determines the area is free of predators based on best professional judgment.

(6) All persons must keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(7) All persons must conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(8) All persons must crawl slowly to access seabird next boxes on Año Nuevo Island if pinnipeds are within view.

(9) Researchers must coordinate research visits to intertidal areas of Southeast Farallon Island and coordinate research activities for Año Nuevo Island to minimize the number of trips to these areas.

(b) [Reserved]

§ 217.125 Requirements for monitoring and reporting.

(a) *Visual monitoring program.* (1) Standard information recorded must include species counts (with age/sex classes noted when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event.

(2) The lead biologist must serve as an observer to record incidental take.

(3) Information to be recorded must include the following:

(i) The date, time, and location (or closest point of ingress) of each visit to the research site;

(ii) Composition of the marine mammals sighted, such as species, sex, and life history stage (*e.g.,* adult, sub-adult, pup);

(iii) The number (by species) of marine mammals observed during the activities;

(iv) Estimated number of marine mammals (by species) that may have been harassed during the activities, according to a three-point scale of disturbance contained in any LOA issued under § 216.106 of this chapter and § 217.126. Only observations of disturbance Levels 2 and 3 should be recorded as takes;

(v) Behavioral responses or modifications in behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach);

(vi) Information on the weather, including the tidal state and horizontal visibility; and

(vii) If applicable, note the presence of any offshore predators (date, time, number, and species).

(b) *Prohibited Take.* (1) In the event that personnel discovers an injured or dead marine mammal, Point Blue shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS as soon as feasible. If the death or injury was clearly caused by Point Blue's activities, Point Blue

must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. Point Blue must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(c) *Initial report.* Point Blue must report observations of unusual behaviors, numbers, or distributions of pinnipeds, or of tag-bearing carcasses, to the NMFS West Coast Regional Office.

(d) *Annual report.* (1) A draft annual report covering the period of January 1 through December 31 of each year must be submitted to NMFS Office of Protected Resources by April 1 of each year. The final annual report after year five may be included as part of the final report (see below). The report must include a summary of the information gathered pursuant to the monitoring requirements set forth above and in the LOA.

(2) A final annual report must be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft annual report. If no comments are received from NMFS, the draft annual report will be considered the final report.

(e) *Final report.* (1) A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the fifth year. A final report must be submitted to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered the final report.

§ 217.126 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Point Blue must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Point Blue may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Point Blue must apply for and obtain a modification of the LOA as described in § 217.127.

(e) The LOA shall set forth:

(1) Permissible methods and numbers of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 217.127 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.126 for the activity identified in § 217.120(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS' Office of Protected Resources determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS' Office of Protected Resources may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.126 for the activity identified in § 217.120(a) may be modified by NMFS' Office of Protected Resources under the following circumstances:

(1) *Adaptive management.* NMFS' Office of Protected Resources may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Point Blue regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Point Blue's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS' Office of Protected Resources will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS' Office of Protected Resources determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.126, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§§ 217.128—217.129 [Reserved]

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