



INCIDENTAL HARASSMENT AUTHORIZATION

The Army Corps of Engineers (ACOE) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to incidentally harass marine mammals, under the following conditions:

1. This incidental harassment authorization (IHA) is valid from April 1, 2022 through March 31, 2023.
2. This IHA authorizes take incidental to breakwater repair, as specified in the ACOE's IHA application, associated with the San Luis Breakwater Repair Project in Avila Beach, California.
3. General Conditions
 - (a) A copy of this IHA must be in the possession of the Holder of the Authorization (Holder), supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Holder operating under the authority of this IHA.
 - (b) The species and/or stocks authorized for taking are listed in Table 1. Authorized take, by Level B harassment only, is limited to the species and numbers listed in Table 1.
 - (c) The taking by serious injury or death, or by Level A harassment, of any of the species listed in Table 1 or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA. Any taking exceeding the authorized amounts listed in Table 1 is prohibited and may result in the modification, suspension, or revocation of this IHA.
 - (d) The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant ACOE staff are trained prior to the start of construction activity subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.
4. Mitigation Requirements

- (a) The Holder must employ PSOs and establish monitoring locations as described in section 5 of this IHA. The Holder must monitor the project area to the extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.
- (b) Monitoring must take place from 30 minutes prior to initiation of construction activity (i.e., pre-start clearance monitoring) through 30 minutes post-completion of construction activity.
- (c) The Holder must implement the shutdown zones indicated in Table 2. If a marine mammal is observed entering or within the shutdown zones, construction activity must be delayed or halted (as described in condition 4(e) of this IHA).
- (d) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Construction may commence when the determination is made.
- (e) If construction is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.
- (f) The Holder must use soft start techniques. Soft start requires contractors and equipment to slowly approach the work site creating a visual disturbance allowing animals in close proximity to construction activities a chance to leave the area prior to stone resetting or new stone placement. Contractors shall avoid walking or driving equipment through the seal haul-out. A soft start must be implemented at the start of each day's construction activity and at any time following cessation of activity for a period of 30 minutes or longer.
- (g) Construction activity must be halted (as described in condition 4(e) of this IHA) upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within a 200 m Level B harassment zone (Table 2).
- (h) The Holder must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum

level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

- (i) Vessels would approach the breakwater perpendicular to the area they need to be as much as is feasible to minimize interactions with pinnipeds on or near the breakwater.
- (j) Construction work will start at the landward end of the breakwater as much as feasible.

5. Monitoring Requirements

- (a) Marine mammal monitoring must be conducted in accordance with the IHA application and this IHA.
- (b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following:
 - (i) PSOs must be independent (i.e., not construction personnel) and have no other assigned tasks during monitoring periods.
 - (ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.
 - (iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training.
 - (iv) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.
- (c) The Holder must establish the following monitoring. For all rock setting activities, a minimum of one observer must be assigned to each active rock setting location to monitor the shutdown zone.
- (d) These observers must record all observations of marine mammals, regardless of distance from the construction activity, as well as additional data indicated in section 6 of this IHA.

6. Reporting

- (a) The Holder must submit a draft report on all monitoring conducted under this IHA within 90 calendar days of the completion of monitoring or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 days following resolution of any NMFS comments on the draft report. If no comments are received from NMFS within 30 days of receipt of the draft report, the report shall be considered final.
- (b) All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *Dwayne.Meadows@noaa.gov*.
- (c) The report must include:
 - (i) Dates and times (begin and end) of all marine mammal monitoring;
 - (ii) Construction activities occurring during each daily observation period, including:
 - A. How many and what type of rocks were set;
 - B. Total duration of rock setting; and
 - (iii) PSO locations during marine mammal monitoring;
 - (iv) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
 - (v) Upon observation of a marine mammal, the following information:
 - A. PSO who sighted the animal and PSO location and activity at time of sighting;
 - B. Time of sighting;

- C. Identification of the animal (e.g., genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
 - D. Distance and bearing of each marine mammal observed to the rock setting for each sighting (if rock setting was occurring at time of sighting);
 - E. Estimated number of animals (min/max/best);
 - F. Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
 - G. Animal's closest point of approach and estimated time spent within the harassment zone;
 - H. Number of disturbances, by species and age, according to a three-point scale of disturbance (see Table 3). Observations of disturbance Levels 2 and 3 must be recorded as takes. Description of any additional marine mammal behavioral observations (e.g., observed behaviors such as feeding or traveling;
- (vi) Number of marine mammals detected within the harassment zones, by species; and
 - (vii) Detailed information about implementation of any mitigation (e.g., shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal, if any.
- (d) The Holder must submit all PSO datasheets and/or raw sighting data, as specified in condition 6(b) of this IHA.
 - (e) Reporting injured or dead marine mammals:

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast regional stranding network (562-980-3264) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the specified activities until NMFS OPR 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 this IHA. The Holder 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.

7. This Authorization may be modified, suspended or revoked if the holder fails to abide by the conditions prescribed herein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines: (1) the authorized taking is likely to have or is having more than a negligible impact on the species or stocks of affected marine mammals, (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat.

8. Renewals

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities are planned or (2) the specified activities would not be completed by the time this IHA expires and a Renewal would allow for completion of the activities, provided all of the following conditions are met:

- (a) A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (the Renewal IHA expiration date cannot extend beyond one year from expiration of this IHA).
- (b) The request for renewal must include the following:
 - (i) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed for this IHA, are a

subset of the activities, or include changes so minor (e.g., reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- (ii) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
- (c) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings made in support of this IHA remain valid.

Donna S. Wieting,
Director, Office of Protected Resources
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Table 1. Authorized Incidental Take.

Common name	Scientific name	Stock	Level A harassment	Level B harassment
Harbor seal	<i>Phoca vitulina</i>	California	0	1,797
Steller sea lions	<i>Eumetopias jubatus</i>	Eastern DPS	0	3,355
California sea lion	<i>Zalophus californianus</i>	U.S.	0	52,557

Table 2. Shutdown and Harassment Zones.

Minimum shutdown zone		Level B Harassment Zone
Phocid	Otariid	
10	10	200

Table 3. 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.