26 March 2012

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Sonoma County Water Agency's application seeking to renew its authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to construction and maintenance activities in association with estuary management activities at the Russian River near Jenner, California. The estuary management activities would occur year-round from April 2012 to April 2013. The Commission also has reviewed the National Marine Fisheries Service's 16 March 2012 *Federal Register* notice (77 Fed. Reg. 115722) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission has commented on previous requests from this applicant for incidental harassment authorizations.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

RATIONALE

The Sonoma County Water Agency plans to manage the Russian River estuary by preventing flooding and adverse modification of critical habitat for salmonids listed under the Endangered Species Act. The proposed activities would include (1) construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon for juvenile salmonids; (2) artificial breaching of the barrier beach that would minimize flood risk; (3) topographical and geophysical beach surveys that would investigate the effects of a historical, dilapidated jetty on the formation and maintenance of the estuary; and (4) physical and biological monitoring (i.e., invertebrates and fish) associated with the proposed activities. The authorization would permit the taking of pinnipeds during the various estuary management activities for a one-year period. Use of heavy equipment and increased presence of humans would be the main sources of marine mammal disturbance.

The Service preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals, California sea lions, and northern elephant seals. It also anticipates that any impact on the affected species and stocks would be negligible. The Service does not anticipate any take of marine mammals by death or serious injury

and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

- restricting lagoon outlet channel activities to a maximum of two consecutive days per event and up to three events during the harbor seal pupping season (15 March–30 June);
- separating lagoon outlet channel activities by a minimum of a one week no-work period during the harbor seal pupping season to allow for a disturbance recovery period, unless flooding is a threat;
- removing all equipment during the no-work period;
- selecting topographical well sites that are greater than 61 m from the haul-out site and south of the jetty to minimize disturbance;
- restricting electromagnetic imaging activities to the harbor seal non-pupping season (1 July–14 March);
- cautiously approaching the seal haul-out ahead of heavy equipment to minimize potential for stampedes;
- avoiding walking or driving heavy equipment through the seal haul-out;
- slowly driving heavy equipment onto the beach and minimizing the number of shutdowns and start-ups when on the beach;
- using multiple qualified observers to monitor concurrently at the project site and at nearby haul-out sites on the day before the proposed activities;
- using multiple qualified observers to monitor concurrently at the project site and at nearby haul-out sites one hour before, during, and one hour after proposed activities;
- observing activities from a bluff to minimize harassment;
- imposing speed restrictions and keeping as far away from the haul-outs as possible for boats used during physical and biological monitoring;
- coordinating with the Steward's Seal Watch monitoring program to determine if pups less than one week of age are on the beach prior to the proposed activities and if so, delaying activities until the pup has left the site or until the last day possible to prevent flooding;
- consulting with the National Marine Fisheries Service and the California Department of Fish and Game, if a pup less than one week of age remains on the beach;
- restricting physical and biological monitoring (i.e., for fish and invertebrates) if a pup less than one week of age is at the monitoring site or on a path to that site;
- reporting abandoned pups and injured and dead seals immediately to the National Marine Fisheries Service's stranding network; and
- using qualified observers to monitor twice per month at the project site and at the other coastal and river haul-outs for baseline monitoring.

The Marine Mammal Commission considers the proposed mitigation and monitoring measures sufficient to avoid non-negligible impacts on harbor seals, California sea lions, and northern elephant seals that might occur in the project area. The Marine Mammal Commission therefore concurs with the National Marine Fisheries Service's preliminary finding and recommends that the Service issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,

Timothy J. Ragen, Ph.D.
Executive Director