



MARINE MAMMAL COMMISSION

18 April 2011

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 at the Russian River near Jenner, California. The estuary management activities would occur year-round from April 2011 to April 2012. The Commission also has reviewed the National Marine Fisheries Service's 18 March 2011 *Federal Register* notice (76 Fed. Reg. 14924) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission previously commented on a similar incidental harassment authorization.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested 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 to 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, and (3) physical and biological (i.e., invertebrates and fish) monitoring associated with the proposed activities. The lagoon management period would occur from 15 May through 15 October, while the artificial breaching period would be from 16 October through 14 May. Use of heavy equipment and increased presence of humans would be the main sources of disturbance of marine mammals.

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. The measures include—

- (1) 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;
- (2) separating lagoon outlet channel activities by a minimum of a one-week-long no-work period during the harbor seal pupping season to allow for a disturbance recovery period, unless flooding is a threat;
- (3) removing all equipment during the no-work period;
- (4) cautiously approaching the seal haul-out site ahead of heavy equipment to minimize potential for stampedes;
- (5) avoiding walking or driving heavy equipment through the seal haul-out site;
- (6) slowly driving heavy equipment onto the beach and minimizing the number of shutdowns and start-ups when on the beach;
- (7) using qualified observers to monitor one day before proposed activities concurrently at the project site and at nearby haul-out sites;
- (8) using qualified observers to monitor one hour before, during, and one hour after proposed activities concurrently at the project site and at nearby haul-out sites;
- (9) observing activities from a bluff to minimize harassment;
- (10) imposing speed restrictions and keeping as far away from the haul-out sites as possible for boats used during physical and biological monitoring;
- (11) coordinating with the 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;
- (12) 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;
- (13) restricting physical and biological monitoring if a pup less than one week of age is at the monitoring site or on a path to that site;
- (14) reporting abandoned pups and injured and dead seals immediately to the National Marine Fisheries Service's stranding network; and
- (15) using qualified observers to monitor twice per month at the project site and at the other coastal and river haul-out sites for baseline monitoring.

The Marine Mammal Commission concurs with the National Marine Fisheries Service's preliminary finding and recommends that the Service issue the requested 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