



MARINE MAMMAL COMMISSION

10 October 2016

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the California Department of Fish and Wildlife–Central Region (CADFW) application seeking to renew its authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to construction activities in association with a tidal marsh restoration project in Elkhorn Slough, California, during a one-year period. The Commission also has reviewed the National Marine Fisheries Service’s (NMFS) 30 September 2016 notice (81 Fed. Reg. 67297) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

CADFW plans to restore tidal marsh in the Minhoto–Hester Marsh in Elkhorn Slough. Operators would use a vibratory hammer to install sheet piles on up to four days. Heavy equipment and human presence would be the main sources of disturbance on the remaining 132 days of activities. All proposed activities would occur during daylight hours only.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS 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 measures. The mitigation, monitoring, and reporting measures include—

- using delay and shut-down procedures;
- using one qualified protected species observer to monitor the exclusion and Level B harassment zones for 30 minutes before, during, and for 30 minutes after (1) all in-water activities, (2) all activities that occur north of 36° 48' 38.91" N, 121° 45' 08.03" W and ending at 36° 48' 38.91" N, 121° 45' 27.11" W, and (3) all activities occurring within 30.5 m of tidal waters—when construction activities occur in other areas (including when a significant change in the activities or location within the overall project area would occur and when

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activities cease for more than one week), monitoring would occur on the first three days of activities to ensure harassment does not occur¹;

- beginning construction activities gradually each day and starting tractors one at a time;
- delaying activities if a pup less than one week of age comes within 20 m of where heavy equipment is in use—if that pup remains at the project site, consulting with NMFS to determine the appropriate course of action;
- notifying NMFS immediately if a harbor seal scales the 2-m sheet pile berm and enters the project area;
- reporting injured and dead marine mammals to NMFS and the West Coast Regional Stranding Coordinator using NMFS's phased reporting approach and suspending activities, if appropriate; and
- submitting an annual report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the incidental harassment authorization, subject to the inclusion of the proposed mitigation, monitoring, and reporting measures. Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Rebecca J. Lent, Ph.D.
Executive Director

¹ If harassment is observed, then monitoring would continue until there are three successive days of no harassment.