



MARINE MAMMAL COMMISSION

25 January 2017

Mr. Steve Henry, Field Supervisor
Ventura Field Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Dear Mr. Henry:

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 Fish and Wildlife Service’s (FWS) 19 January 2017 notice (82 Fed. Reg. 6627) 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.

FWS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of southern sea otters. It also anticipates that any impact on the affected species and stocks would be negligible. FWS 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;
- coordinating with FWS if an otter refuses to leave the construction area under its own volition;
- reporting injured and dead marine mammals to the Monterey Bay Aquarium and FWS's Southern Sea Otter Recovery Coordinator and submitting a written report to FWS²;
- submitting an annual report.

The Commission concurs with FWS's preliminary finding and recommends that FWS 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,



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.

² Although FWS omitted this measure from the *Federal Register* notice, it indicated that the measure will be included in the final incidental harassment authorization.