



# MARINE MAMMAL COMMISSION

10 October 2017

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 application submitted by Venoco, LLC (Venoco) seeking 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 pile replacement at the Casitas Pier in Carpinteria, California. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 7 September 2017 notice (82 Fed Reg. 42306) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

Venoco plans to replace piles associated with the Casitas Pier. Operators will remove 13 fender piles by cutting them at the mudline and will install up to 13 16-in steel pipe/14-in H-piles using a vibratory and/or impact hammer. Venoco expects pile-driving activities to occur on up to 2.5 days, weather permitting. It would limit activities to daylight hours only.

NMFS preliminarily has determined that, at most, the proposed activities could cause Level B harassment of small numbers of three marine mammal species but anticipates that any impact on the affected species and stocks would be negligible. NMFS also 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—

- restricting activities to occur only from July through November to minimize impacts during the harbor seal pupping season;
- conducting in-situ source level and sound propagation measurements during one day of activities and adjusting the sizes of the Level A and B harassment zones, as necessary<sup>1</sup>;

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<sup>1</sup> Although proposed by Venoco, NMFS omitted this measure from the *Federal Register* notice. However, NMFS indicated it would include this measure in the final authorization. Venoco also is in the process of revising its hydroacoustic monitoring plan based on comments from the Commission and NMFS. Those revisions include expanding the distance to the far-field hydrophone, ensuring the appropriate thresholds are used and distances reported accordingly, increasing the measurement capabilities from 10 to 20 kHz, ensuring ambient conditions are recorded appropriately (e.g., in continuous 10-minute intervals), ensuring the impulse duration is the duration that contains 90% of pulse energy, etc.

- ceasing activities if any marine mammal comes within 10 m of the equipment<sup>2</sup>;
- using two qualified protected species observers to monitor the Level A and B harassment zones<sup>3</sup> for 30 minutes<sup>4</sup> before, during, and for 30 minutes after the proposed activities;
- using standard soft-start, delay and shut-down procedures;
- using delay and shut-down procedures, if a species for which authorization has not been granted or if a species for which authorization has been granted but the authorized takes have been met, approaches or is observed within the Level B harassment zone<sup>2</sup>;
- reporting injured and dead marine mammals to NMFS and the West Coast Regional Stranding Coordinator<sup>5</sup> using NMFS's phased approach and suspending activities, if appropriate; and
- submitting a final report.

### Mitigation measures

The Commission noted multiple missing or inconsistent mitigation measures in NMFS's proposed authorization for Venoco, which NMFS indicated it would include for the final authorization. As the Commission has discussed with NMFS in recent years, NMFS should include standard mitigation, monitoring, and reporting measures in a consistent manner for all authorizations involving pile driving and removal. The Commission is unsure why NMFS is not implementing consistent measures for action proponents that plan to conduct similar activities. Thus, the Commission recommends that NMFS include standard mitigation, monitoring, and reporting measures consistently for *all* authorizations involving pile-driving and -removal activities.

### Rounding of take estimates

As the Commission indicated in previous letters regarding this matter<sup>6</sup>, the method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. In this instance, NMFS also used fractional activity days to inform its take estimation. Commission notes that, although NMFS developed criteria associated with rounding that it had planned to share with the Commission a few months ago, it has yet to do so. Therefore, the Commission again recommends that NMFS share the rounding criteria with the Commission such that this matter can be resolved expeditiously.

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<sup>2</sup> NMFS indicated it omitted these standard mitigation measures from the *Federal Register* notice but would include them in the final authorization.

<sup>3</sup> The Commission informally noted multiple typos and errors regarding the source levels, metrics, and extent of various Level A and B harassment zones as reported in the *Federal Register* notice. NMFS indicated it would include the correct information in the final authorization.

<sup>4</sup> NMFS included both a 30-minute and a 15-minute pre-activity monitoring period in the *Federal Register* notice. Although unnecessary for the species involved, NMFS indicated it plans to require a 30-minute pre-activity monitoring period in the final authorization based on the timeframe Venoco had proposed.

<sup>5</sup> NMFS incorrectly included Alaska Regional Stranding Coordinator in various portions of the *Federal Register* notice but indicated it would amend the errors in the final authorization.

<sup>6</sup> See the Commission's [29 November 2016 letter](#) detailing this issue.

Ms. Jolie Harrison  
10 October 2017  
Page 3

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

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R" and a distinct "Lent" at the end.

Rebecca J. Lent, Ph.D.,  
Executive Director