23 January 2020

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 National Marine Fisheries Service's (NMFS) 15 January 2020 notice (84 Fed. Reg. 2369) and the letter of authorization (LOA) application submitted by the Partnership for the Interdisciplinary Study of Coastal Oceans (PISCO) at the University of California Santa Cruz[1] seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act (the MMPA). The taking would be incidental to conducting rocky intertidal monitoring activities along the California and Oregon coasts.

PISCO proposes to conduct rocky intertidal surveys at numerous sites along the California and Oregon coasts. The proposed activities are part of a long-term monitoring program that includes (1) surveying for algae and invertebrates, (2) assessing and measuring invertebrates, and (3) measuring tidal height topographically. Increased presence of humans is the main source of marine mammal disturbance.

NMFS preliminarily has determined that, at most, the proposed activities would temporarily modify the behavior of small numbers of California sea lions, harbor seals, northern elephant seals, and Steller sea lions. 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 proposed mitigation, monitoring, and reporting measures include—

- rescheduling surveys at sites if other pinniped species[2] are present;
- rescheduling surveys at sites where pups are present, unless the survey can be conducted without disturbing females and dependent pups;
- using binoculars to detect any marine mammals prior to approaching the site and approaching each site with caution (slowly and quietly) to avoid surprising any hauled-out individuals and to reduce stampeding of individuals;

[1] Both of which also work in collaboration with the Multi-Agency Rocky Intertidal Network.
[2] i.e., Guadalupe fur seals and northern fur seals.

- keeping a safe distance from and not approaching any marine mammal while conducting research, unless it is absolutely necessary;
- avoiding loud noises (i.e., using hushed voices);
- avoiding pinnipeds along access paths to sites by locating and taking a different path and vacating the area as soon as the survey is completed;
- monitoring the offshore area for predators (i.e., killer whales and white sharks) and avoiding flushing pinnipeds when predators are observed in nearshore waters;
- using qualified observers[3] to monitor and evaluate incidental takes[4];
- ceasing activities if the authorized takes are met or if a species for which takes have not been authorized is present[5];
- reporting tagged pinniped carcasses to the appropriate personnel;
- reporting rare or unusual species, numbers, or behaviors of marine mammals to NMFS;
- reporting injured and dead marine mammals to NMFS and the West Coast Regional Stranding Coordinator using NMFS's phased approach and suspending activities, if appropriate;
- implementing adaptive management, as necessary; and
- submitting draft and final annual and comprehensive monitoring reports[6].

The Commission concurs with NMFS's preliminary findings and recommends that NMFS issue the final rule, 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,

Peter O Thomas

Peter O. Thomas, Ph.D.,
Executive Director

[3] The Commission informally noted that NMFS did not include in the preamble the requirement that the project field biologists will function as observers and that they must have an undergraduate degree in biology, consistent with measure 5(a) in PISCO's current authorization. NMFS indicated that the requirement would be included in the preamble and LOA.
[4] The Commission informally noted that NMFS had included an outdated version of the disturbance criteria in the preamble and proposed rule. NMFS indicated that it would include the current criteria in the preamble and final rule.
[5] The Commission informally noted that NMFS did not include in the preamble this standard requirement, consistent with measure 4(h) in PISCO's current authorization. NMFS indicated that the requirement would be included in the preamble and LOA.
[6] The Commission informally noted that NMFS did not include in the preamble the various information to be provided in the reports, consistent with measure 5(b) in PISCO's current authorization. NMFS indicated that the requirement would be included in the preamble and LOA.