



MARINE MAMMAL COMMISSION

11 August 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) 24 July 2020 notice (85 Fed. Reg. 44835) and the letter of authorization (LOA) application submitted by Point Blue Conservation Science (Point Blue) 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 seabird research activities in California.

Point Blue¹ proposes to (1) monitor and census seabird colonies, (2) observe seabird nesting habitat, (3) restore nesting burrows, and (4) resupply a field station. The proposed research activities would occur at various sites on Southeast Farallon Island (SEFI), on Año Nuevo Island, and at Point Reyes National Seashore. Vessel- and research-related sound and the increased presence of humans would be the main sources of marine mammal disturbance.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of six species of pinnipeds. 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—

- postponing beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water;
- operating vessels slowly with caution and approaching beaches slowly for all beach landings;
- selecting a pathway of approach to research sites that minimizes the number of marine mammals harassed;
- avoiding visits to sites when (1) pups are present and (2) species for which authorization has not been granted are present;
- monitoring for offshore predators (i.e., great white sharks and killer whales) and restricting approaches of hauled-out pinnipeds if predators are present;

¹ Along with Oikonos Ecosystem Knowledge and Point Reyes National Seashore.

- keeping voices hushed and bodies low to the ground in sight of pinnipeds;
- conducting seabird observations at North Landing on Southeast Farallon Island from an observation blind that is shielded from the view of hauled-out pinnipeds;
- crawling slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view;
- coordinating research visits to intertidal areas of Southeast Farallon Island to reduce the number of pinniped takes;
- coordinating research goals for Año Nuevo Island to minimize the number of trips to the island;
- coordinating monitoring schedules on Año Nuevo Island so that areas near any pinnipeds would be accessed only once per visit;
- using qualified observers to monitor and evaluate incidental takes;
- reporting observations of unusual behaviors, numbers, or distributions of pinnipeds to NMFS's West Coast Region Office;
- reporting marked or tag-bearing pinnipeds or carcasses or rare or unusual species to NMFS's West Coast Region Office;
- reporting injured and dead marine mammals to NMFS's Office of Protected Resources and 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.

Steller sea lion takes and monitoring requirements

NMFS estimated the numbers of proposed takes based on either the maximum annual recorded take for each species from 2014–2018 with a 10 percent increase² or the authorized number of takes from the most recent incidental harassment authorization, whichever was greater. Based on Point Blue's 2019 monitoring report, there were 61 reported Level B harassment takes of Steller sea lions at SEFI³, which is greater than the highest number of takes in previous years (59 takes in 2014). A 10 percent increase would equate to 67 takes. Although Point Blue indicated in its monitoring report that there were an unusually high number of Steller sea lions hauled out on the marine terrace on one day in May which resulted in the 'extra' incidental takes, it was not a one-time anomaly. Two Steller sea lions exhibited a Level 3 response⁴ and 10 sea lions exhibited a Level 2 response⁵ on 12 May 2019. However, 10 Steller sea lions exhibited a Level 3 response on 5 April 2019 as well (Appendix 1). Since comparable numbers of Steller sea lions were disturbed in April and May, Steller sea lions appear to be hauling out in greater numbers than observed previously at

² To account for potential population growth over the course of the five-year authorization.

³ Even though Table 1 in the monitoring report erroneously noted 50 takes, Appendix 1 denoted 61 takes.

⁴ Animals flushing into the water.

⁵ Point Blue used an old version of NMFS's disturbance scale in its 2019 monitoring report and denoted Level 2 responses by animals moving more than 1 m rather than by animals moving at least two body lengths or changing direction more than 90°.

SEFI, and SEFI supports one of two breeding colonies, the Commission recommends that NMFS authorize at least 72 takes of Steller sea lions⁶ in the final rule.

In responses to the Commission's informal comments, NMFS indicated that it will remind Point Blue of NMFS's current disturbance scale that was updated years ago. NMFS also indicated that the disturbance scale would be included in the preamble to the final rule and in the LOA that is issued. The Commission also informally noted that Point Blue did not provide the monitoring information required to be collected under sections 5(a), (b), and potentially (d) of previous final authorizations⁷ in its 2019 monitoring report. NMFS indicated that all information required to be collected under section 217.125(a) of the final rule would be required to be included in the monitoring report under the LOA that is issued. In addition to including in the LOA the disturbance scale and the monitoring data specified in section 217.125(a) of the final rule as reporting requirements in the LOA, the Commission recommends that NMFS require Point Blue in any LOA issued to provide the raw sightings data in each annual monitoring report. The Commission had similar comments regarding the proposed rule for Partnership for the Interdisciplinary Study of Coastal Oceans⁸ and the recent incidental harassment authorization renewal for the U.S. Fish and Wildlife Service⁹. NMFS should ensure that this basic information is included consistently in any incidental harassment authorization or rulemaking involving disturbance of hauled-out pinnipeds.

Mitigation measures

In the last two incidental harassment authorizations, NMFS required Point Blue to cease or delay activities if the number of takes that have been authorized for a given species are met (see condition 4(d)¹⁰ in the 2020 final authorization¹¹ and the 2018 final authorization¹²). It is unclear why NMFS did not include the same condition in the proposed rule, as it is still pertinent. Moreover, unusual mortality events (UMEs) routinely cause increased numbers of pinnipeds to strand or occur on beaches in large numbers in California. That phenomenon occurred for California sea lions in 2015 (see Table 2 in the preamble to the proposed rule; 85 Fed. Reg. 44842) and necessitated Point Blue to request a mid-season authorization modification to increase the number of authorized takes (80 Fed. Reg. 61376 and 80321). Given that a UME could occur again in the next five years in the areas where Point Blue would conduct activities and the number of authorized takes could be met, the Commission recommends that NMFS include an additional specific condition in section 217.124(a)(4) of the final rule that Point Blue avoid visits to sites if the number of takes that has been authorized for a given species is met.

⁶ Which is based on the 61 takes documented by Point Blue in 2019, the 3.44-percent growth rate of pups in California specified by NMFS in the 2019 stock assessment report, and the five years that the final rule would be valid.

⁷ <https://www.fisheries.noaa.gov/webdam/download/76895401> and <https://www.fisheries.noaa.gov/webdam/download/103876692>.

⁸ See the Commission's [23 January 2020 letter](#).

⁹ See the Commission's [27 July 2020 letter](#).

¹⁰ Which required researchers to cease or delay visits if the number of takes that have been granted for a species are met, if a species for which takes were not granted is observed (e.g., northern fur seals and Guadalupe fur seals), or if pups are present at a site. The latter two requirements were included in the proposed rule (section 217.124(a)(4)).

¹¹ <https://www.fisheries.noaa.gov/webdam/download/103876692>.

¹² <https://www.fisheries.noaa.gov/webdam/download/76895401>.

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

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive style with a large initial "P" and a distinct "O" before the last name.

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