



MARINE MAMMAL COMMISSION

13 March 2014

Ms. Jolie Harrison
Incidental Take Program Supervisor
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 Sonoma County Water Agency's (SCWA) 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 and maintenance activities in association with estuary management activities at the Russian River near Jenner, California. The estuary management activities would occur year-round from April 2014 to April 2015. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 5 March 2014 notice (79 Fed. Reg. 12472) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission has commented on previous requests from this applicant for incidental harassment authorizations.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

RATIONALE

SCWA plans to manage the Russian River estuary by preventing flooding and adverse modification of critical habitat for salmonids listed under the Endangered Species Act. The proposed activities would include (1) construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon for juvenile salmonids; (2) artificial breaching of the barrier beach that would minimize flood risk; (3) topographical and geophysical beach surveys that would investigate the effects of a historical, dilapidated jetty on the formation and maintenance of the estuary; and (4) physical and biological monitoring (i.e., invertebrates and fish¹) associated with the proposed activities. Use of heavy equipment and increased presence of humans would be the main sources of marine mammal disturbance.

¹ Including acoustic telemetry monitoring of tagged fish.

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

- 1) restricting lagoon outlet channel activities to a maximum of two consecutive days per event and up to three events during the harbor seal pupping season (15 March–30 June);
- 2) separating lagoon outlet channel activities by a minimum of a one-week no-work period during the harbor seal pupping season to allow for recovery from disturbance, unless flooding is a threat;
- 3) removing all equipment during the no-work period;
- 4) restricting electromagnetic imaging activities to the harbor seal non-pupping season (1 July–14 March);
- 5) cautiously approaching the seal haul-out ahead of heavy equipment to minimize potential for stampedes;
- 6) avoiding walking or driving heavy equipment through the seal haul-out;
- 7) slowly driving heavy equipment onto the beach and minimizing the number of shutdowns and start-ups when on the beach;
- 8) using multiple qualified observers to monitor concurrently at the project site and at nearby haul-out sites for one to three days before, during, and up to two days after lagoon outlet channel activities—on the days an activity occurs, monitoring at least one hour before, during, and at least one hour after those activities;
- 9) using multiple qualified observers to monitor at least one hour before, during, and at least one hour after artificial breaching activities;
- 10) using qualified observers to monitor twice per month at the project site and at the other coastal and river haul-out sites for baseline monitoring;
- 11) observing activities from a bluff to minimize harassment;
- 12) imposing speed restrictions on boats used during physical and biological monitoring and keeping them as far away from the haul-outs as possible;
- 13) coordinating with the Steward's Seal Watch monitoring program to determine if pups less than one week of age are on the beach prior to the proposed activities and if so, delaying activities until the pups have left the site or until the last day possible to prevent flooding;
- 14) consulting with NMFS and the California Department of Fish and Game if a pup less than one week of age remains on the beach;
- 15) restricting topographic surveys and physical and biological monitoring (i.e., for fish and invertebrates) if a pup less than one week of age is at the site or on a path to that site; and
- 16) reporting abandoned pups and injured and dead seals immediately to NMFS's stranding network.

The Commission considers the proposed mitigation and monitoring measures sufficient to avoid significant impacts on harbor seals, California sea lions, and northern elephant seals that might occur in the project area. The Commission therefore concurs with NMFS's preliminary finding and recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

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The Commission is grateful for the opportunity to provide comments on SCWA's application. Please contact me if you have questions concerning the Commission's recommendation.

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