



MARINE MAMMAL COMMISSION

3 November 2015

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 Point Blue Conservation Science's (Point Blue) request to modify its authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA), which authorizes it to take small numbers of marine mammals by harassment incidental to conducting seabird research activities on Southeast Farallon Island (SEFI), Año Nuevo Island, and Point Reyes National Seashore in California. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 13 October 2015 notice (80 Fed. Reg. 61376) announcing receipt of the modification request. The current incidental harassment authorization expires on 30 January 2016.

Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, is authorized to conduct seabird research activities including (1) monitoring and censusing seabird colonies, (2) observing seabird nesting habitat, (3) restoring nesting burrows, and (4) resupplying a field station. Current environmental conditions in the Pacific Ocean offshore of California—which researchers have attributed to an impending El Niño event—have contributed to unprecedented numbers of California sea lions hauled out in areas where Point Blue conducts its surveys and maintains critical infrastructure. Sea lion numbers have continued to grow throughout the summer, with greater numbers of sea lions hauled out in areas where researchers have not normally recorded sea lion presence. Since 15 August 2015, Point Blue has reported that thousands of sea lions have hauled out in unusual locations¹ on SEFI. As such, Point Blue has requested to modify its current incidental harassment authorization by increasing the number of authorized takes for California sea lions by 35,000. All other aspects of the authorization would remain unchanged, including the required mitigation, monitoring, and reporting measures and the small numbers and negligible impact analyses and determinations.

NMFS indicated in its *Federal Register* notice that it is critical for Point Blue to keep California sea lions off of the various structures on SEFI to prevent severe damage and ensure the safety of personnel. The Commission agrees but is unsure why NMFS would be covering what appears to be directed taking under a section 101(a)(5)(D) authorization rather than relying on the authorities available under sections 101(a)(4) or 109(h) of the MMPA. The proposed modification should include only the increase in the number of authorized takes based on the number of sea lions that

¹ Including boat landings, a water storage structure, and main access paths.

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would be harassed incidental to the seabird research and resupply activities, not takes associated with removing sea lions from critical infrastructure (including docks, landings, and piers) and access paths or human safety concerns. Therefore, the Commission recommends that NMFS issue the modification to the incidental harassment authorization but base the increase in the number of takes of California sea lions only on those expected to be taken incidental to conducting the various seabird research and resupply activities, including those activities that were to be conducted at Año Nuevo Island and Point Reyes National Seashore prior to the authorization expiring on 30 January 2016. Further, NMFS should clarify in the amended authorization and in the related *Federal Register* notice that all directed taking to prevent damage to critical infrastructure and ensure human safety should be conducted in accordance with the authorities available under sections 101(a)(4) or 109(h) of the MMPA.

Please contact me if you have questions regarding the Commission's recommendation and rationale.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director