



MARINE MAMMAL COMMISSION

30 December 2009

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application from Point Reyes Bird Observatory Conservation Science requesting authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions by Level B harassment. The Commission also has reviewed the National Marine Fisheries Service's 23 November 2009 *Federal Register* notice (74 Fed. Reg. 61109) announcing receipt of the application and requesting comments on its proposal to issue an incidental harassment authorization, subject to certain conditions. All of the requested takes of California sea lions, harbor seals, and northern elephant seals would be incidental to research on seabirds carried out on the South Farallon Islands, Año Nuevo Island, and Point Reyes National Seashore, California. Up to 16 Steller sea lions per year would be taken incidental to the seabird research and up to four Steller sea lions per year would be taken incidental to research being conducted on northern elephant seals at the South Farallon Islands (authorized under scientific research permit No. 373-1868).

The Service has preliminarily determined that the planned seabird and pinniped research may result, at most, in the Level B harassment of up to 5,000 California sea lions, 418 Pacific harbor seals, 253 northern elephant seals, and 20 Steller sea lions. The Service believes that takes by harassment will be at the lowest levels practicable due to the monitoring and mitigation measures proposed in the application and in the Service's *Federal Register* notice (e.g., researchers speaking in hushed voices, using observation blinds, landing on beaches on Año Nuevo Island only after pinnipeds have entered the water, and coordinating visits to the island). Neither the researchers nor the Service anticipates takes of pinnipeds by injury or death. The Service also does not anticipate new direct, indirect, or cumulative impacts to the human and natural environment associated with the proposed incidental harassment authorization beyond those analyzed in the environmental assessment and supplemental environmental assessment prepared in 2007 and 2008, respectively, for similar activities.

RECOMMENDATIONS

The Marine Mammal Commission concurs with the Service's preliminary determination that, given the mitigation measures proposed by the applicant, the planned research activities are likely to result in no more than temporary modification of behavior (e.g., animals moving away from researchers or temporarily vacating haul-out areas). Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization. However, because taking other than by Level B harassment is possible, the Marine Mammal Commission

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further recommends that any authorization issued specify that, if a death or serious injury of a marine mammal occurs that appears to be related to the research, activities be suspended while the Service determines whether steps can be taken to avoid further injuries or deaths or until such taking has been authorized by regulations promulgated under section 101(a)(5)(A) of the Marine Mammal Protection Act.

Please contact me if you or your staff has questions concerning our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Ragen" followed by a flourish and the word "for".

Timothy J. Ragen, Ph.D.
Executive Director