



# United States Department of the Interior

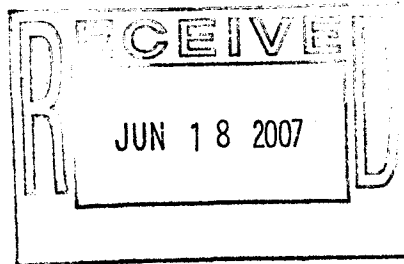


## FISH AND WILDLIFE SERVICE

Pacific Regional Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4181

IN REPLY REFER TO:  
FWS\RI\AES\Consultation

P. Michael Payne  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, Maryland 20910



JUN -8 2007

Dear Mr. Payne:

This responds to your letter dated March 20, 2007, requesting our concurrence that your proposed Steller Sea Lion (*Eumetopias jubatus*) and Northern Fur Seal (*Callorhinus ursinus*) Research Program is not likely to adversely affect federally listed species and designated critical habitat under the jurisdiction of the Fish and Wildlife Service (Service). This response was prepared in accordance with the requirements of section 7 of the Endangered Species Act of 1973, as amended (ESA).

As described in the Draft Programmatic Environmental Impact Statement (DPEIS; Alternative 4) for the proposed action, the National Marine Fisheries Service (NMFS) proposes to direct or facilitate research funding, and issue take permits pursuant to section 104 of the Marine Mammal Protection Act of 1972, as amended, section 10(a)(1)(A) of the ESA, and the Fur Seal Act of 1966, as amended, for research on rookeries and haulouts in California, Oregon, Washington, and Alaska, and their surrounding waters. The seals will have multiple procedures performed on them by researchers approaching from land and by vessels as described in Alternative 4 of the DPEIS.

### Alaska

The Service's Alaska Regional Office is replying separately to your concurrence request regarding relevant listed species and critical habitat in Alaska.

### Fish and Wildlife Refuges and Migratory Birds

All of the rocks, reefs, and islands along the Oregon coast are included within the Oregon Islands National Wildlife Refuge and the Three Arch Rocks National Wildlife Refuge, including the Rogue Reef and Orford Reef. A Special Use Permit (SUP) issued by the Service is needed to access the refuges, conduct research, and perform aerial surveys. The National Oceanic and Atmospheric Administration's Marine Mammals Lab and the Oregon Department of Fish and Wildlife currently hold SUPs for this work.

While a SUP can be issued for multiple years, annual coordination is required prior to any work being done on a refuge to allow refuge staff an opportunity to assess local conditions, which may

justify modifications to research activities. For example, several seabird species are known to breed on Pyramid Rock (Rogue Reef) and Long Brown Rock (Orford Reef), including the Pelagic Cormorant (*Phalacrocorax pelagicus*), Brandt's Cormorant (*Phalacrocorax penicillatus*), Black Oystercatcher (*Haematopus bachmani*), Western Gull (*Larus occidentalis*), and the Pigeon Guillemot (*Cephus columba*). Some of these species breed at these locations each year while others breed there irregularly. The Migratory Bird Treaty Act, which does not allow incidental take, protects these species; therefore, such take must be avoided. For that reason, if the proposed research program is likely to adversely impact these nesting seabirds, the research activities may need to be delayed to later in the season or precluded in some years to prevent seabird mortalities. The Service also prefers that aerial surveys be flown at the maximum altitude possible to prevent disturbance impacts to nesting seabirds.

### Listed Species in the Lower 48 States

Based on the information provided with your request, supplemental information you provided to the Service on May 16, 2007, and other information contained in our decision record, we concur that the proposed research program is not likely to adversely affect the following listed and candidate species and critical habitat in California, Oregon, and Washington:

- |   |            |
|---|------------|
| • San Miguel Island Fox ( <i>Urocyon littoralis littoralis</i> )          | Endangered |
| • Southern Sea Otter ( <i>Enhydra lutris nereis</i> )                     | Threatened |
| • Bald Eagle ( <i>Haliaeetus leucophalus</i> )                            | Threatened |
| • Short-tailed Albatross ( <i>Pheobastria albatrus</i> )                  | Endangered |
| • Marbled Murrelet ( <i>Brachyramphus marmoratus</i> )                    | Threatened |
| • Marbled Murrelet Critical Habitat                                       |            |
| • California Brown Pelican ( <i>Pelecanus occidentalis californicus</i> ) | Endangered |
| • California Least Tern ( <i>Sterna antillarum browni</i> )               | Endangered |
| • Western Snowy Plover ( <i>Charadrius alexandrinus nivosus</i> )         | Endangered |
| • Western Snowy Plover Critical Habitat                                   |            |
| • Xantus's Murrelet ( <i>Synthliboramphus hypoleucus</i> )                | Candidate  |

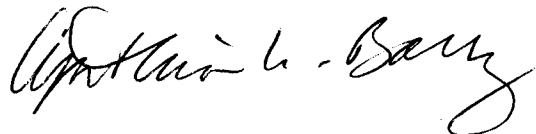
The basis for our determination is described in the enclosure. Based on the supplementary information you provided to the Service on May 16, 2007, this concurrence applies to the following sites: San Miguel Island, San Nicolas Island, Santa Barbara Island, and St. George Reef in California; and Rogue Reef and Orford Reef in Oregon. While Washington is mentioned in your letter, no specific actions have been identified for that State. Further ESA consultation with the Service is recommended prior to implementation of any future research activities at sites not listed above.

We appreciate the opportunity to assist you in complying with the ESA. Please be advised that the Pacific Region of the Service no longer includes California; the California/Nevada Operations

Office (CNO) in Sacramento, California, now has regional authority for the Service in California and Nevada. Additional information about CNO can be found at: <http://www.fws.gov/cno/>.

If you have any questions regarding this response, please contact Daniel Brown of my staff at (503) 231-6281.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel L. Brown".

**Acting**

Assistant Regional Director, Ecological Services

Enclosure

cc:

ESPM, CNO

ARD, R7

OCNWRC

ARD, MBSP

**Enclosure: Rationale for concurring that the National Marine Fisheries Service's (NMFS) proposed Steller Sea Lion and Northern Fur Seal Research Program is not likely to adversely affect federally listed/candidate species and critical habitat in Oregon, Washington, and California**

San Miguel Island Fox

Research activities on the northern fur seal similar to those proposed herein have been conducted on San Miguel Island for more than 10 years. To date, no adverse effects on the San Miguel Island fox caused by these research activities have been documented. Access to the island and activities on-island are strictly controlled by the National Park Service (NPS), which manages the island, in part, for the benefit of the fox. NPS restrictions and oversight are likely to prevent any adverse effects to the San Miguel Island fox.

Although mentioned only briefly in the Draft Programmatic Environmental Impact Statement (DPEIS; Alternative 4), sick or injured northern fur seals or orphaned northern fur seal pups may be euthanized using phenobarbital. If a facultative scavenger, such as the San Miguel Island fox, ingested portions of a euthanized seal, it may be adversely affected by the phenobarbital. However, the NPS will require researchers to bury any seals euthanized with phenobarbital in specific locations and at a depth to prevent secondary exposure of scavengers to the euthanizing agent.

Southern Sea Otter

The most likely effect to southern sea otters caused by the proposed action would be from vessel strikes or human disturbance. However, because researchers that are accessing pinniped rookeries by boat are likely to be actively looking for and avoiding areas with sea otters, combined with the limited number of vessel trips, the likelihood of such an impact or disturbance is discountable.

Bald Eagle

Nesting bald eagles on the Channel Islands could be adversely affected by low-flying aircraft during aerial surveys. However, the research-related aircraft are likely to fly high enough to avoid such disturbance. The limited frequency and duration of aerial research activities are also factors that support a finding that the proposed action is not likely to adversely affect the bald eagle. Disturbance during ground surveys is also unlikely as the researchers would not be in areas where bald eagles nest (i.e., high rocky, cliff faces or promontories). For the same reason as noted above for the San Miguel Island fox, bald eagles are not likely to access euthanized seals.

Short-tailed Albatross

Interactions between researchers and the short-tailed albatross are unlikely because the short-tailed albatross forages in open water offshore away from areas where the proposed action will be implemented. The short-tailed albatross is not known to land on the Channel Islands.

### Marbled Murrelet

Interactions between researchers and the marbled murrelet or its critical habitat are unlikely because the murrelet nests in coastal forests and forages in open water offshore, places where the proposed research will not occur.

### California Brown Pelican

One record exists of the California brown pelican nesting on Prince Island, a small islet off of San Miguel Island. No disturbance of breeding brown pelicans on Prince Island is likely because the proposed research program will be conducted on San Miguel Island.

Supplemental information provided by NMFS suggests that some research may take place on Santa Barbara Island where brown pelicans also nest. The proposed action is not likely to cause adverse effects to the pelican on Santa Barbara Island because the NPS is likely to close the pelican breeding area to human access.

### California Least Tern

No occurrences of California least tern nesting colonies overlap with the proposed research sites.

### Western Snowy Plover

The western snowy plover nests on San Nicolas Island, however, the areas where the subject research is likely to occur is not snowy plover nesting habitat, nor are they designated as critical habitat.

### Xantus's murrelet

Interactions between researchers and the Xantus's murrelet are unlikely because the murrelet nests in caves, rock crevices, in gaps under boulders, or under dense vegetation, places where the proposed research will not occur.