



**Finding of No Significant Impact
on the Issuance of Incidental Take Authorizations to the Sonoma County Water
Agency for Russian River Estuary Management Activities**

National Marine Fisheries Service

Summary of Proposed Action

The National Marine Fisheries Service (NMFS) proposes to issue an Incidental Harassment Authorization (IHA) and subsequent incidental take authorizations to the Sonoma County Water Agency (Agency) for the incidental taking of small numbers of marine mammals in the wild, pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*). The IHA would be valid for one year from the date of issuance. Upon expiration, either IHAs or 5-year regulations would be issued due to the ongoing nature of the activities. MMPA authorizations would allow the taking, by Level B harassment only, of harbor pinnipeds (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant pinnipeds (*Mirounga angustirostris*) incidental to the Agency's Russian River Estuary Management Activities, specifically the use of heavy equipment (e.g., bulldozers or excavators) during water level management events on Goat Rock State beach, the location of the Jenner harbor seal haulout, and during physical and biological monitoring of the estuary. The purpose of the Agency's activities is to alleviate flooding to the low lying residential community built along the estuary while complying with Reasonable and Prudent Measure 2 contained within NMFS' 2008 Biological Opinion on the impacts of the Agency's estuary management program on federally-listed Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), CCC coho salmon (*O. kisutch*), and Coastal California (CC) Chinook salmon (*O. tshawytscha*).

In 2005, the U.S. Army Corps of Engineers (Corps), issued a decision document constituting, among other things, an EA for its issuance of a permit to the Agency for breaching activities on Goat Rock State beach. NMFS found that EA insufficient for purposes of issuing an ITA with respect to marine mammals but has incorporated other aspects (e.g., social and economic environment, other wildlife) of the Corps analysis into a separate EA prepared by NMFS, entitled *Environmental Assessment for the Issuance of Incidental Take Authorizations to the Sonoma County Water Agency for Russian River Estuary Management Activities*, to consider the effects of issuing the IHA on marine mammals. NMFS hereby incorporates, by reference, both the Corps and NMFS EAs.



NEPA Analysis

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans?

Response: The proposed action of issuing incidental take authorizations (ITAs) to the Agency, as allowed for under section 101(A)(5) of the MMPA, solely authorizes the take, by Level B harassment only, of marine mammals incidental to Russian River Estuary Management activities. ITAs do not authorize the Agency’s activities; this is done through a U.S. Army Corps of Engineer Permit of which the Agency has acquired. NMFS anticipates the presence and operation of bulldozing and excavator equipment on the beach will result in short-term harassment to marine mammals but will not cause substantial damage to ocean and coastal habitats, including EFH, as documented in NMFS EFH consultation with the Agency, dated September 24, 2008.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The proposed action is issuance of an MMPA incidental take authorization to the Agency for the take, by Level B harassment, of marine mammals incidental to their water level management events. A foraging study conducted at the Jenner haulout revealed, through stomach content analysis, that the seals are not foraging on adults of these fish but juveniles and smolt life stages (Hanson 1993). The same study also reported that juvenile/smolt salmonid remains found in seal scat on the sandbar at the mouth increase in frequency when the mouth is closed (i.e., when the lagoon forms). Maintaining the lagoon for extended periods of time, as the proposed action would allow for, may result in increased availability of these fish as prey. Therefore, the proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area with respect to marine mammals.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: As part of the mitigation plan designed to minimize impacts to pinnipeds hauled out, crews would cautiously approach the haulout prior to arrival of

equipment. This method is designed to reduce the chance of stampeding. Individual human health would not be affected because Agency staff would not approach close enough for pinnipeds to cause physical harm (e.g., bites) or transmit zoonotic diseases. Because an ITA is limited to authorizing marine mammal harassment, no other health or public safety issues would occur. Therefore, the proposed action is not expected to have a substantial adverse impact on public health or safety.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: Authorizing harassment of pinnipeds would adversely affect pinnipeds present at the Jenner haulout during the time at which the lagoon needs to be maintained or the sandbar needs to be breached and possibly during monitoring. Pinnipeds may become alert, move but remain on beach, or flush into the water due to presence of crews and equipment. However, these impacts are expected to be short-term and not exceed Level B (behavioral) harassment. No long term impacts are expected, as shown from multiple years of comprehensive monitoring data. Issuance of the IHA will have no incremental effect on any species listed as threatened or endangered or critical habitat designated for such species.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: Recreational pinniped watching by both tourists and residents is common at the Jenner haulout. Stewards' Pinniped Watch Public Education Program, provides private docent-led pinniped watch adventures at a suggested donation of \$5-10. Local residents also enjoy the pinnipeds at the Jenner haulout as evident by the local monitoring programs. However, there is no large commercial pinniped watching industry generating substantial revenue and employment opportunities (e.g., southern resident killer whale watching industry). While the presence of heavy equipment on the beach would likely flush pinnipeds into the water, this activity is short-term, has been occurring for years, and monitoring data indicates pinnipeds return within 1 day of activity cessation and do not support any indication of abundance decline. In addition, harassment would be minimized by such factors as conducting lagoon management during high tide (when pinnipeds would likely not be on the beach), limiting the number of consecutive work days, and allowing a one-week pinniped recovery period between events. As such, NMFS anticipates pinnipeds would be present for viewing at times when equipment is not on the beach. Therefore, significant impacts to the social and economic environment at the Jenner haulout are not anticipated.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: Authorizing harassment to pinnipeds on the beach is not likely to be highly controversial. The barrier beach at the mouth of the Russian River has been artificially breached for decades; first by local citizens, then the County of Sonoma

Public Works Department, and, since 1995, by the Sonoma County Water Agency (Agency). Although the adaptive lagoon outlet channel management strategy is new, it seeks to work with natural processes and site conditions to maintain an outlet channel that reduces tidal inflow of saline water into the estuary; thereby creating ideal salmonid rearing habitat.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Harassment to marine mammals, caused by the Agency and allowed for in an ITA, would not impact unique areas. Therefore, the proposed action reasonably is not expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: There are no uncertain, unique, or unknown risks to the human environment from the proposed action. The Agency has been conducting breaching activities since 1995 and both the Agency and local residents have been monitoring the seal population at Jenner and adjacent haulouts since the mid-1980s. These long term data sets indicate there is no significant change in seal abundance despite the Agencies activities. Therefore, the effects on the human environment from NMFS' issuance of ITAs are not likely to be highly uncertain or involve unique or unknown risks.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: The proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts. Issuance of any incidental take authorization to the Agency is limited to authorizing marine mammal harassment from the specified activities as described in the MMPA incidental take application and supplemental correspondence. The IHA would be effective April 1, 2010- March 31, 2011. Any future authorizations would be subject to approval under the MMPA.

Seals at the Jenner haulout are subjected to other sources of anthropogenic disturbance in the form of beach goers and kayakers approaching too closely and nearby Hwy 1 traffic noise. These are continuous sources of disturbance and occur on more frequent basis than the Agency's specified activities. As described in as described in detail in Richardson et al. (1995), seals demonstrate some degree of tolerance and habituation to anthropogenic disturbance. NMFS does not anticipate water level management events will introduce an increment of disturbance that will result in cumulative significant impacts.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: As described in response to question 7, the proposed action is not likely to adversely affect physical components of the human environment as the proposed action is authorizing harassment of marine mammals from the Agency's activities. The Corps has issued to permit to carry out the action itself. Therefore, the proposed action is not likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: Authorizing the Agency to harass pinnipeds incidental to their activities is not reasonably expected to result in the introduction or spread of a non-indigenous species.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: Issuance of a one-year IHA is likely to be followed by future ITAs as estuary management activities are ongoing. However, should unforeseen impacts arise from such activities with respect to marine mammals or their habitat, the rulemaking and issuance of annual LOAs would not move forward unless additional mitigation was set in place which would alleviate such identified impacts. Additionally, as provided in 216.107(f), NMFS retains the authority to, after notice and public comment, withdraw, suspend, or revoke the IHA should unexpected circumstances arise. All data gathered from monitoring reports would be used in analyzing impacts to the human environment and presented in a supplemental EA, if appropriate, before a rulemaking or additional IHA would move forward.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

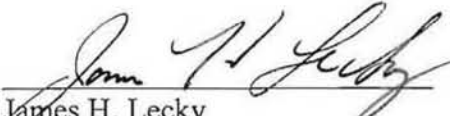
Response: NMFS has reviewed the Agency's compliance with other laws including obtainment of a Corps permit to carry out the action and completion of ESA and EFH consultation. No endangered marine mammal species are present within the action area; therefore, section 7 consultation on impacts to marine mammals under the ESA does not apply. The issuance of the Corps permit demonstrates the Agency has complied with CZMA and state/local applicable laws. Therefore, NMFS has determined that such qualifications have been met; therefore, issuance of ITAs to the Agency is not reasonably expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: The beach located at the mouth of the Russian River, and subject to water level management activities, is part of Goat Rock State Beach which is managed by the California Department of Parks and Recreation. As described in response to question 9 above, this beach and the entire action area provides aesthetic, scenic views and is mainly used for recreational purposes such as kayaking and beachcombing. The local community has developed a program, Seal Watch, to educate the public on responsible viewing guidelines and have posted signs warning of potential harassment. The only other management activity which may occur within the action area is removal of a jetty located at the mouth of the river; however, no plans for this have been announced. Given the beach would not be developed beyond current conditions and Seal Watch is in action, NMFS does not expect the proposed action to result in cumulative adverse effects that could have a substantial effect on affected marine mammal species.

DETERMINATION

In view of the information presented in this document and the incorporated data and analyses in the referenced EA(s) prepared for the Issuance of Incidental Take Authorizations to the Sonoma County Water Agency for Russian River Estuary Management Activities, pursuant to section 101(A)(5)(D) of the MMPA, NMFS hereby determines that the issuance of the IHA with the potential for follow-on issuance of ITAs will not significantly impact the quality of the human environment as described above and in the EA(s). In addition, all beneficial and adverse impacts of the proposed action have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an Environment Impact Statement for this action is not necessary.


James H. Lecky
Director, Office of Protected Resources

MAR 30 2010

Date