MARINE MAMMAL COMMISSION

9 January 2017

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 the National Marine Fisheries Service's (NMFS) 30 December 2016 notice (81 Fed. Reg. 96415) and the letter of authorization application submitted by the Sonoma County Water Agency (SCWA) seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The taking would be incidental to construction, maintenance, and monitoring activities in association with estuary management activities at the Russian River near Jenner, California during a five-year period.

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; and (3) physical and biological monitoring (i.e., invertebrates and fish) associated with the proposed activities. Use of heavy equipment and increased presence of humans would be the main sources of marine mammal disturbance.

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 measures. The mitigation, monitoring, and reporting measures include—

- restricting water management events (i.e., lagoon outlet channel management and artificial breaching) to a maximum of two consecutive days, unless flooding is a threat;
- separating water level management events by a minimum of a one-week no-work period during the harbor seal pupping season (15 March–30 June) to allow for recovery from disturbance, unless flooding is a threat—all equipment would be removed during the no-work period;
- approaching the seal haul-out cautiously ahead of heavy equipment, with the crews on-foot also making an effort to be seen by the seals from a distance;

- avoiding walking or driving heavy equipment through the seal haul-out;
- conducting work as efficiently as possible with the least amount of heavy equipment as possible;
- using multiple qualified observers to monitor concurrently at the project site and at nearby haul-out sites[1] for one to three days before, during, and for up to two days after lagoon outlet channel management activities—on the days an activity occurs, monitoring at least one hour before, during, and at least one hour after those activities;
- using multiple qualified observers to monitor for at least one hour before, during, and at least one hour after artificial breaching activities—monitoring would occur from an overlook on a bluff to minimize disturbance;
- using qualified observers to monitor twice per month at both high and low tide at the project site for baseline monitoring—monitoring would occur from an overlook on a bluff to minimize disturbance;
- imposing speed restrictions on boats used during physical and biological monitoring and driving them as far from the haul-out sites as possible;
- delaying activities, if a pup less than one week of age is on the beach prior to proposed activities that use heavy equipment, until that pup has left the site or until the last day possible to prevent flooding—if that pup remains on the beach, consulting with NMFS and California Department of Fish and Wildlife to determine the appropriate course of action;
- 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 artificial breaching activities;
- restricting physical and biological monitoring if a pup less than one week of age is at the site or on a path to that site;
- reporting abandoned pups and injured and dead seals immediately to NMFS's local stranding network and within 48 hours to NMFS's West Coast Regional Office and its Office of Protected Resources; and
- submitting an annual report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the final rule, subject to the inclusion of the proposed mitigation, monitoring, and reporting measures. Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,

Rebecca J. Lent, Ph.D.
Executive Director

[1] When lagoon outlet management activities occur for more than 21 days.