

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XD66

Takes of Marine Mammals Incidental to Specified Activities; Seabird Research Activities in Central California, 2015–2016

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of a revised incidental harassment authorization.

SUMMARY: We, NMFS, give notice that we have revised an Incidental Harassment Authorization (Authorization) issued to Point Blue Conservation Science (Point Blue) to take marine mammals, by harassment, incidental to conducting seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Point Blue's current Authorization is effective until January 30, 2016, and authorizes the incidental harassment, by Level B harassment only, of approximately 9,871 California sea lions (*Zalophus californianus*). Current environmental conditions in the Pacific Ocean offshore 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 seabird surveys. As such, Point Blue requested a modification to their current Authorization to increase the number of authorized take for California sea lions to continue their research. Per the Marine Mammal Protection Act, we are revising the Authorization to Point Blue for the incidental harassment, by Level B harassment only, a total of 41,889 California sea lions.

DATES: The authorization is still effective January 31, 2015, through January 30, 2016.

ADDRESSES: To obtain an electronic copy of the revised Authorization, write to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of

Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Summary of Request**

On December 23, 2014, NMFS published a **Federal Register** notice of a proposed Authorization to Point Blue (79 FR 76975) and subsequently published a **Federal Register** notice of issuance of the Authorization on February 25, 2015 (80 FR 10066), effective from January 31, 2015, through January 30, 2016. To date, we have issued six one-year Authorizations to Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, for the conduct of the same activities from 2007 to 2015 (72 FR 71121, December 14, 2007; 73 FR 77011, December 18, 2008; 75 FR 8677, February 19, 2010; 77 FR 73989, December 7, 2012; 78 FR 66686, November 6, 2013; and 80 FR 10066, February 25, 2015).

On September 22, 2015, NMFS received a request from Point Blue seeking to revise the Authorization issued on January 31, 2015 (80 FR 10066, February 25, 2015) to increase the number of authorized take of small numbers of California sea lions from approximately 9,871 to a total of 44,871 for the duration of the current Authorization which expires on January 30, 2016. Current environmental conditions in the Pacific Ocean offshore 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 seabird surveys. As such, Point Blue requested a modification to their current Authorization to increase the number of authorized take for California sea lions to continue their seabird research activities. This was the only requested change to the current Authorization.

On October 13, 2015, NMFS published a notice (80 FR 61376) requesting comments on the proposed revision. The **Federal Register** notice set forth only a proposed change in the numbers of take for California sea lions. There were no other changes to the current Authorization as described in the February 25, 2015, **Federal Register** notice of an issued Authorization (80 FR 10066): The specified activity; description of marine mammals in the area of the specified activity; potential effects on marine mammals and their habitat; mitigation and related monitoring used to implement mitigation; reporting; estimated take by incidental harassment for Pacific harbor seals (*Phoca vitulina*), northern elephant

seals (*Mirounga angustirostris*), or Steller sea lions (*Eumetopias jubatus*); negligible impact and small numbers analyses and determinations; impact on availability of affected species or stocks for subsistence uses and the period of effectiveness remain unchanged and are herein incorporated by reference.

Description of the Specified Activity*Overview*

Point Blue will continue to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; and resupply a field station annually in central California (*i.e.*, Southeast Farallon Island, West End Island, Año Nuevo Island, Point Reyes National Seashore, San Francisco Bay, and the Russian River in Sonoma County). The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations.

NMFS outlined the purpose of Point Blue's activities in a previous notice for the proposed authorization (79 FR 76975, December 23, 2014). Point Blue's activities and level of survey effort have not changed since the publication of the **Federal Register** notice announcing the issuance of the Authorization (80 FR 10066, February 25, 2015). For a more detailed description of the authorized action, we refer the reader to that notice of Authorization (80 FR 10066, February 25, 2015).

Need for Modification to the Authorization

The Authorization requires Point Blue to monitor for marine mammals in order to implement mitigation measures to effect the least practicable adverse impact on marine mammals. Monitoring activities consist of conducting and recording observations on pinnipeds within the vicinity of the research areas. The monitoring reports provide dates, location, species, and the researcher's activities. The reports will also include the behavioral state of marine mammals present, numbers of animals that moved greater than one meter, and numbers of pinnipeds that flushed into the water. Between January 31 through November 6, 2015, Point Blue recorded the following instances of Level B harassment for the following research areas: Southeast Farallon Island/West End Island (20,052); Año Nuevo (723); and Point Reyes (30).

Point Blue reports that between January and March, 2015, California sea lion incidental take patterns were relatively normal at the South Farallon Islands/West End Island survey locations. However, during the summer

of 2015, warm water conditions along the California coast in summer resulted in more California sea lions hauling out in areas where Point Blue conducts its seabird research activities. Point Blue reported that throughout the summer months, sea lion numbers continued to grow, with greater numbers hauled out in areas where researchers have not normally recorded sea lion attendance. For example, since August 15, 2015 at the South Farallon Islands, Point Blue reported that thousands of sea lions hauled out in unusual locations high on the islands. During this period, Point Blue has restricted their activities as much as possible to still perform their monitoring duties while trying to minimize pinniped disturbance. Thus, NMFS has modified the current Authorization to increase the number of take by Level B harassment only for California sea lions to a total of 41,889 for the duration of the current Authorization which expires on January 30, 2016.

Comments and Responses

We published a notice of receipt of the proposed revised Authorization in the **Federal Register** on October 13, 2015 (80 FR 61376). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the revised Authorization, provided that the proposed modification includes only the increase in the number of authorized takes based on the number of sea lions that would be harassed incidental to the seabird research and resupply activities and not include takes associated with removing sea lions from critical infrastructure (including docks, landings, and piers) and access paths or human safety concerns which is included in the authorities available under sections 101(a)(4) or 109(h) of the MMPA.

NMFS agrees with the Commission's recommendation and the revised Authorization includes only those takes for California sea lions related to seabird research and resupply activities. Point Blue requested an increase of 35,000 takes based on rough preliminary observations. However, during the MMPA consultation process, Point Blue provided us with draft monitoring reports with more accurate estimates of California sea lions harassed incidental to seabird research activities from September 23, 2015 through November 6, 2015 (approximately 20,805 animals). We further analyzed those preliminary reports and projected that Point Blue could harass an additional 21,084 California sea lions for the remainder of

the current authorization. Thus, the revised Authorization for a total of 41,899 takes for California sea lions accounts for an additional 32,018 takes versus the Point Blue's requested increase of 35,000 takes.

We base these estimates on the largest estimated number of California sea lions taken by day within four reporting periods between January 31, 2015 and November 6, 2015 multiplied by 84 days remaining within the current Authorization. The resulting take estimates are 20,664 California sea lions for Southeast Farallon Island (9,334 animals divided by 38 days then multiplied by 84 days); 336 California sea lions for Ano Nuevo Island (554 animals divided by 156 days then multiplied by 84 days); and 84 California sea lion for (10 animals divided by 38 days then multiplied by 84 days). Based on our final analyses, NMFS would authorize an total 41,889 takes for California sea lions which accounts for take already incurred and the potential for increased take continuing through January 2016.

The revised Authorization also directs Point Blue and its partners to conduct other activities related to preventing damage to critical infrastructure and private property and ensuring personal human safety from hauled out pinnipeds in accordance with sections 101(a)(4) or 109(h) of the MMPA.

Findings

Marine Mammal Protection Act (MMPA)—As required by the MMPA, for the original Authorization, NMFS determined that: (1) The required mitigation measures are sufficient to reduce the effects of the specified activities to the level of least practicable impact; (2) the authorized takes will have a negligible impact on the affected marine mammal species; (3) the authorized takes represent small numbers relative to the affected stock abundances; and (4) Point Blue's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

Negligible Impact: For reasons stated previously in the **Federal Register** notices for the proposed authorization (79 FR 76975, December 23, 2014) and the issued Authorization (80 FR 10066, February 25, 2015), NMFS anticipates that impacts to hauled-out California sea lions during Point Blue's activities would be behavioral harassment of limited duration (*i.e.*, less than one day) and limited intensity (*i.e.*, temporary flushing at most). NMFS does not expect Point Blue's specified activities to cause

long-term behavioral disturbance, permanent abandonment of the haul out area, or stampeding, and therefore injury or mortality to occur.

With the exception of a proposed increase in the number of authorized takes for California sea lions, no other substantive changes have occurred in the interim. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Point Blue's survey activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers: For reasons stated previously in the **Federal Register** notices for the proposed authorization (79 FR 76975, December 23, 2014) and the issued Authorization (80 FR 10066, February 25, 2015) NMFS estimates that four species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. With the exception of an increase in authorized take for California sea lions, no other substantive changes have occurred in the interim. For California sea lions, the proposed increase in take is small relative to the population size. The revised incidental harassment number represents approximately 14 percent of the U.S. stock of California sea lion.

National Environmental Policy Act (NEPA)—In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS prepared an Environmental Assessment (EA) analyzing the potential effects to the human environment from the issuance of a proposed Authorization to Point Blue for their seabird research activities. In January 2014, NMFS issued a Finding of No Significant Impact (FONSI) on the issuance of an Authorization for Point Blue's research activities in accordance with section 6.01 of the NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). No substantive changes have occurred in the interim.

Endangered Species Act (ESA)—No marine mammal species listed under the ESA occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. No substantive changes have occurred in the interim.

Revised Authorization

As a result of these determinations, we have revised the Authorization

issued to Point Blue and its designees for the take of marine mammals incidental to their seabird research activities, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: December 18, 2015.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE191

2016 Annual Determination To Implement the Sea Turtle Observer Requirement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) is providing notification that the agency will not identify additional fisheries to observe on the Annual Determination (AD) for 2016, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2015 AD (see Table 1) remain on the AD for a 5-year period and are required to carry observers upon NMFS' request until December 31, 2019.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, Office of Protected Resources, 301-427-8402; Ellen Keane, Greater Atlantic Region, 978-282-8476; Dennis Klemm, Southeast Region, 727-824-5312; Dan Lawson, West Coast Region, 562-980-3209; Irene Kelly, Pacific Islands Region, 808-725-5141.

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m.

Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the Sea Turtle Observer Requirement for Fisheries (72 FR 43176, August 3, 2007) may be obtained at www.nmfs.noaa.gov/pr/species/turtles/regulations.htm or from any NMFS Regional Office at the addresses listed below:

- NMFS, Greater Atlantic Region, 55 Great Republic Drive, Gloucester, MA 01930;
- NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701;
- NMFS, West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802;
- NMFS, Pacific Islands Region, Protected Resources, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.*, NMFS has the responsibility to implement programs to conserve marine species listed as endangered or threatened. All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*; North Pacific distinct population segment), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (*Caretta caretta*; Northwest Atlantic distinct population segment), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of green sea turtles in Florida and on the Pacific coast of Mexico, and breeding colony populations of olive ridley sea turtles on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of green and olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline. On March 23, 2015, NMFS and the U.S. Fish and Wildlife Service (USFWS) found that the green sea turtle is composed of 11 distinct population segments (DPSs) that qualify as "species" for listing under the ESA. NMFS and USFWS proposed to remove the current range-wide listing and, in its place, list eight DPSs as threatened and three as endangered.

Incidental take, or bycatch, in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (including harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). The purpose of the sea turtle observer requirement and the AD is ultimately to implement ESA sections 9 and 4(d), which prohibit the incidental take of endangered and threatened sea turtles, respectively, and to conserve sea turtles. Section 11 of the ESA provides for civil and criminal penalties for anyone who violates a regulation issued pursuant to the ESA, including regulations that implement the take prohibition, as well as for the issuance of regulations to enforce the take prohibitions. NMFS may grant exceptions to the take prohibitions for activities that are covered by an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

The most effective way for NMFS to learn about sea turtle-fishery interactions, in order to implement management measures and prevent or minimize take, is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176, August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas, or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under this rule may result in civil or criminal penalties under the ESA.

Where observers are required, NMFS will pay the direct costs for vessels to