

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

31 October 2008

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

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application from PRBO 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. Most takings would be incidental to research on seabirds carried out on the South Farallon Islands, Año Nuevo Island, and Point Reyes National Seashore, California. The applicant is also requesting authority to take by Level B harassment up to 16 Steller sea lions per year incidental to conducting research on northern elephant seals at the South Farallon Islands. The Commission also has reviewed the National Marine Fisheries Service's 29 September 2008 *Federal Register* notice announcing receipt of the application and requesting comments on its proposal to issue an incidental harassment authorization, subject to certain conditions.

The Service has preliminarily determined that the planned seabird and pinniped research may result, at most, in the Level B harassment of up to 2,242 California sea lions, 418 Pacific harbor seals, 243 northern elephant seals, and 31 Steller sea lions (17 more than was requested and authorized in the applicant's 2007 incidental harassment authorization). 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, use of observation blinds, landing on beaches on Año Nuevo Island only after pinnipeds have entered the water, coordinating visits to the island). No take of pinnipeds by injury or death is anticipated. Because of the proposed increase in the number of Steller sea lions that may be harassed, the Service is preparing a supplement to the environmental assessment prepared for the 2007 action.

RECOMMENDATION

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 by the subject pinnipeds (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. Although we believe that there is only a small possibility that taking other than by Level B harassment will occur, the Marine Mammal Commission further recommends that any authorization issued specify that, if a mortality or serious injury of a marine mammal occurs that

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appears to be related to the research, activities be suspended while the Service determines whether steps can be taken to avoid further injuries or mortalities or until such taking has been authorized by regulations promulgated under section 101(a)(5)(A) of the Marine Mammal Protection Act.

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

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a prominent initial 'T'.

Timothy J. Ragen, Ph.D.
Executive Director