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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE468**

**Takes of Marine Mammals Incidental to Specified Activities; Seabird and Pinniped Research Activities in Central California, 2016-2017**

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, we hereby give notification that the National Marine Fisheries Service (NMFS) has issued an Incidental Harassment Authorization (IHA) to Point Blue Conservation Science (Point Blue), to take marine mammals, by Level B harassment, incidental to conducting seabird and pinniped research activities in central California, May, 2016 through May, 2017.

**DATES:** Effective May 16, 2016 through May 15, 2017.

**ADDRESSES:** The public may obtain an electronic copy of the Point Blue's application, supporting documentation, the authorization, and a list of the references cited in this document by visiting: <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>. In the case of problems accessing these documents, please call the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Environmental Assessment and associated Finding of No Significant Impact, prepared pursuant to the National Environmental Policy Act of 1969, are also available at the same site.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

An electronic copy of Point Blue's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

**Background**

Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) we make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

We shall grant an authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the

species or stock(s) for subsistence uses (where relevant). Also, the authorization must set forth the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings. We have defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

### **Summary of Request**

On September 29, 2015, NMFS received an application from Point Blue requesting the taking by harassment of marine mammals incidental to conducting seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Point Blue, along with partners Oikonos Ecosystem Knowledge and Point Reyes National Seashore, plan to conduct the proposed activities for one year. These partners are conducting this research under cooperative agreements with the U.S. Fish and Wildlife Service in consultation with the Gulf of the Farallones National Marine Sanctuary. Following the initial application submission, Point Blue submitted an updated version of their application on February 23, 2016. We considered the revised renewal request for 2016-2017 activities as adequate and complete

on February 25, 2016.

On December 24, 2015 (80 FR 80321), we published a **Federal Register** notice announcing our issuance of a revised Authorization (effective through January 30, 2016) to Point Blue to take marine mammals by harassment, incidental to conducting the same activities presented in this notice of proposed Authorization. The revised Authorization increased the number of authorized take for California sea lions from approximately 9,871 to 44,871 due to Point Blue encountering unprecedented numbers of California sea lions hauled out in survey areas due to warming environmental conditions in the Pacific Ocean offshore California—which researchers have attributed to an El Niño event.

These proposed activities would occur in the vicinity of pinniped haul out sites and could likely result in the incidental take of marine mammals. We anticipate take, by Level B Harassment only, of individuals of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), Steller sea lions (*Eumetopias jubatus*) and northern fur seals (*Callorhinus ursinus*) to result from the specified activity.

This is the organization's seventh request for an Authorization. To date, we have issued an Incidental Harassment Authorization (Authorization) to Point Blue (formerly known as PRBO Conservation Science) for the conduct of similar 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; December 24, 2015, 80 FR 80321).

## **Description of the Specified Activity**

### *Overview*

Point Blue proposes to monitor and census seabird colonies; observe seabird nesting habitat; restore nesting burrows; observe breeding elephant and harbor seals; and resupply a field station annually in central California (i.e., Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California).

The purpose of the seabird research is to continue a 30-year monitoring program of the region's seabird populations. Point Blue's long-term pinniped research program monitors pinniped colonies to understand elephant and harbor seal population dynamics and to contribute to the conservation of both species.

#### *Dates and Duration*

The Authorization would be effective from May 16, 2016 through May 15, 2017.

#### *Specified Geographic Region*

Point Blue will conduct their research activities within the vicinity of pinniped haul out sites in the following locations:

*South Farallones Islands:* The South Farallon Islands consist of Southeast Farallon Island located at 37°41'54.32" N; 123° 0'8.33" W and West End Island. The South Farallon Islands have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary.

*Año Nuevo Island:* Año Nuevo Island located at 37° 6'29.25" N; 122°20'12.20" W is one-quarter mile (402 meters (m)) offshore of Año Nuevo Point in San Mateo County,

CA. The island lies within the Monterey Bay National Marine Sanctuary and the Año Nuevo State Marine Conservation Area.

*Point Reyes National Seashore:* Point Reyes National Seashore is approximately 40 miles (64.3 km) north of San Francisco Bay and also lies within the Gulf of the Farallones National Marine Sanctuary.

*Detailed Description of Activities*

We outlined the purpose of Point Blue's activities in a previous notice for the proposed authorization (81 FR 15249, March 22, 2016). Following is a brief summary of the activities.

*Seabird Research on Southeast Farallon Island:* Daily observations of seabird colonies would occur at a maximum frequency of three 15-minute visits per day; and daily observations would be conducted of breeding common murres (*Uria aalge*) at a maximum frequency of one, five-hour visit per day in September. These activities usually involve one or two observers conducting daily censuses of seabirds or conducting mark/recapture studies of breeding seabirds on Southeast Farallon Island. The researchers plan to access the island's two landing areas, the North Landing and the East Landing, by 14 to 18 feet (ft) (4.3 to 5.5 meters [m]) open motorboats which are hoisted onto the island using a derrick system and then travel by foot to coastal areas of the island to view breeding seabirds from behind an observation blind.

*Field Station Resupply on Southeast Farallon Island:* Resupply of the field station would occur once every two weeks at a maximum frequency of 26 visits annually. Resupply activities involve personnel approaching either the North Landing or East Landing by motorboat to offload supplies.

*Seabird Research on Año Nuevo Island:* Researchers would monitor seabird burrow nesting habitat quality and to conduct habitat restoration at a maximum frequency of 20 visits per year. This activity involves two to three researchers accessing the north side of the island by a 12 ft (3.7 m) Zodiac boat. Once onshore, the researchers will check subterranean nest boxes and restore any nesting habitat for approximately 15 minutes.

*Seabird Research on Point Reyes National Seashore:* The National Park Service in collaboration with Point Blue would monitor seabird breeding and roosting colonies; conduct habitat restoration; remove non-native plants; monitor intertidal areas; and maintain coastal dune habitat. Seabird monitoring usually involves one or two observers conducting the survey by small boats along the shoreline. Researchers would visit the site at a maximum frequency of 20 times per year.

The proposed activities have not changed between the proposed authorization notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, we refer the reader to the notice for the proposed authorization (81 FR 15249, March 22, 2016).

### **Comments and Responses**

We published a notice of receipt of Point Blue's application and proposed Authorization in the **Federal Register** on March 22, 2016 (81 FR 15249). During the 30-day comment period, we received one comment from the Marine Mammal Commission (Commission) which recommended that we issue the requested Authorization, provided that Point Blue carries out the required monitoring and mitigation measures as described in the notice of the proposed authorization (81 FR 15249, March 22, 2016) and the application. We have included all measures proposed in the notice of the proposed

authorization (81 FR 15249, March 22, 2016).

We also received a comment letter from one private citizen who opposed the authorization on the basis that NMFS should not allow any Authorizations for harassment. We considered the commenter's general opposition to Point Blue's activities and to our issuance of an Authorization. The Authorization, described in detail in the Federal Register notice of the proposed Authorization (81 FR 15249, March 22, 2016) includes mitigation and monitoring measures to effect the least practicable impact to marine mammals and their habitat. It is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements. The MMPA allows U.S. citizens to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout the Federal Register notice (81 FR 15249, March 22, 2016) we made the necessary preliminary findings under 16 U.S.C. 1361(a)(5)(D) to support issuance of Authorization.

#### **Description of the Marine Mammals in the Area of the Proposed Specified Activity**

The marine mammals most likely to be harassed incidental to conducting seabird and pinniped research at the proposed research areas are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent the eastern distinct population segment (DPS) of the Steller sea lion and northern fur seal. We refer the



public to Carretta *et al.*, (2015) for general information on these species which we presented in the notice of the proposed authorization (81 FR 15249, March 22, 2016).

California (southern) sea otters (*Enhydra lutris nereis*), listed as threatened under the ESA and categorized as depleted under the MMPA, usually range in coastal waters within 1.24 miles (2 km) of the shoreline. Point Blue has not encountered California sea otters during the course of their seabird or pinniped research activities over the past five years. This species is managed by the U.S. Fish and Wildlife Service and we do not consider it further in this notice of issuance of an Authorization.

#### *Potential Effects on Marine Mammals*

Acoustic and visual stimuli generated by: (1) noise generated by motorboat approaches and departures; (2) noise generated during restoration activities and loading operations while resupplying the field station; and (3) human presence during seabird and pinniped research activities, have the potential to cause California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions hauled out in areas within Southeast Farallon Island, Año Nuevo Island and Point Reyes National Seashore to flush into the surrounding water or to cause a short-term behavioral disturbance for marine mammals.

We expect that acoustic and visual stimuli resulting from the proposed motorboat operations and human presence has the potential to harass marine mammals. We also expect that these disturbances would be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

We included a summary and discussion of the ways that the types of stressors associated with Point Blue's specified activities (i.e., visual and acoustic disturbance) have the potential to impact marine mammals in a previous notice for the proposed authorization (81 FR 15249, March 22, 2016).

*Vessel Strike:* The potential for striking marine mammals is a concern with vessel traffic. However, it is highly unlikely that the use of small, slow-moving boats to access the research areas would result in injury, serious injury, or mortality to any marine mammal. Typically, the reasons for vessel strikes are fast transit speeds, lack of maneuverability, or not seeing the animal because the boat is so large. Point Blue's researchers will access areas at slow transit speeds in easily maneuverable boats negating any chance of an accidental strike.

*Rookeries:* No research activities would occur on pinniped rookeries and breeding animals are concentrated in areas where researchers would not visit. Therefore, we do not expect mother and pup separation or crushing of pups during flushing.

The potential effects to marine mammals described in the notice for the proposed authorization (81 FR 15249, March 22, 2016) did not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections).

#### Anticipated Effects on Habitat

We considered these impacts in detail in the notice for the proposed authorization (81 FR 15249, March 22, 2016). Briefly, we do not anticipate that the proposed research activities would result in any significant or long-term effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (i.e., fish and

invertebrates). While we anticipate that the specified activity could potentially result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible. We do not consider behavioral modification to cause significant or long-term consequences for individual marine mammals or their populations.

### **Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

Point Blue has based the mitigation measures which they will implement during the proposed research, on the following: (1) protocols used during previous Point Blue seabird research activities as required by our previous authorizations for these activities; and (2) recommended best practices in Richardson *et al.* (1995).

To reduce the potential for disturbance from acoustic and visual stimuli associated with the activities Point Blue and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Postpone beach landings on Año Nuevo Island until pinnipeds that may be present on the beach have slowly entered the water.

(2) Select a pathway of approach to research sites that minimizes the number of marine mammals harassed.

(3) Avoid visits to sites used by pinnipeds for pupping.

(4) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.

(5) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds.

(6) Conduct seabird observations at North Landing on Southeast Farallon Island in an observation blind, shielded from the view of hauled out pinnipeds.

(7) Crawl slowly to access seabird nest boxes on Año Nuevo Island if pinnipeds are within view.

(8) Coordinate research visits to intertidal areas of Southeast Farallon Island (to reduce potential take) and coordinate research goals for Año Nuevo Island to minimize the number of trips to the island.

(9) Coordinate monitoring schedules on Año Nuevo Island, so that areas near any pinnipeds would be accessed only once per visit.

(10) Have the lead biologist serve as an observer to evaluate incidental take.

#### *Mitigation Conclusions*

NMFS has carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we have prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS' evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, we expect that the successful implementation of the measure would minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation – an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of Point Blue’s proposed measures, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

### **Monitoring and Reporting**

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the Marine Mammal Protection Act states that we must set forth “requirements pertaining to the monitoring and reporting of such taking.” The Act’s implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for an incidental take authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the general goals by documenting the following:

- Occurrence of marine mammal species in action area (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) Affected species (*e.g.*, life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

As part of its 2016-2017 application, Point Blue proposes to sponsor marine mammal monitoring during the present project, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the incidental harassment authorization. The Point Blue researchers will monitor the area for pinnipeds during all research activities. Monitoring activities will consist of conducting and recording observations on pinnipeds within the vicinity of the proposed research areas. The monitoring notes would provide dates, location, species, the researcher's activity, behavioral state, and numbers of animals that were alert or moved and numbers of pinnipeds that flushed into the water.

Observers will record marine mammal behavior patterns and disturbances observed before, during, and after the activities according to a three-point scale including:

- (1) Head orientation in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in au-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 m; "alert";
  - (2) Movements in response to or away from disturbance, over short distances (typically two times its body length) and including dramatic changes in direction or speed of locomotion for animals already in motion "movement";
  - (3) All flushes to the water as well as lengthier retreats (> 3 m); "flight".
- However, authorized takes shall only be recorded when disturbances meet criteria for #2 and #3 described above.

Point Blue has complied with the monitoring requirements under the previous authorizations for the 2007 through 2015 seasons. The results from previous Point Blue's monitoring reports support our findings that the proposed mitigation measures, which we also required under the 2007-2015 Authorizations provide the means of effecting the least practicable adverse impact on the species or stock.

Point Blue will submit a monitoring report on the May 16, 2016 through May 15, 2017 research. Upon receipt and review, we will post this annual report on our website at <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>.



Point Blue must submit a draft final report to NMFS' Office of Protected Resources within 60 days after the conclusion of the 2016-2017 field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the Authorization.

Point Blue will submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, within 30 days after receiving comments from NMFS on the draft final report. If Point Blue does not receive any comments from NMFS on the draft report, NMFS and Point Blue will consider the draft final report to be the final report.

#### **Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

NMFS proposes to authorize take by Level B harassment only for the proposed seabird research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Acoustic (i.e., increased sound) and visual stimuli generated during these proposed activities may have the potential to cause marine mammals in the harbor area to experience temporary, short-term changes in behavior.

Based on Point Blue's previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas, we estimate that approximately 53,538 California sea lions, 485 harbor seals, 221 northern elephant seals, 5 northern fur seals, and 38 Steller sea lions could be affected by Level B behavioral harassment over the course of the effective period of the proposed Authorization.

The authorized take differs from Point Blue's original request for California sea lions (44,871), harbor seals (343), northern elephant seals (196), and Steller sea lions (106). NMFS bases these new estimates on historical data from previous monitoring reports and anecdotal data for the same activities conducted in the proposed research areas. In brief, for four species (*i.e.*, California sea lions, harbor seals, northern elephant seals, and Steller sea lions), we created a statistical model to derive an estimate of the average annual increase of reported take based on a best fit regression analysis (*i.e.*, linear or polynomial regression) of reported take from 2007 to 2016. Next, we added the predicted annual increase in take for each species to the baseline reported take for the 2015-2016 seasons to project the estimated take for each species for the 2016-2017 proposed Authorization. We carried through the same predicted annual increase in take for future Authorizations (2017-2019) to obtain a mean projected take for each species. Last, we analyzed the reported take for each activity by calculating the upper bound of the 95 percent confidence interval of the mean reported take (2007-2016) and mean projected take (2017-2019) for each species. Our use of the upper confidence interval represents the best available information that supports our precautionary deliberation of how much take could occur annually.

Although Point Blue has not reported encountering northern fur seals during the course of their previously authorized activities, NMFS has included take (5) for northern fur seals based on recent stranding information in the area for that species.

There is no evidence that Point Blue's planned activities could result in injury, serious injury or mortality within the action area. Moreover, the required mitigation and monitoring measures will minimize further any potential risk for injury, serious injury, or mortality. Thus, we do not authorize any injury, serious injury or mortality. We expect all potential takes to fall under the category of Level B harassment only.

#### Encouraging and Coordinating Research

Point Blue will continue to coordinate monitoring of pinnipeds during the research activities occurring on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore. Point Blue conducts bone fide research on marine mammals, the results of which may contribute to the basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems.

#### **Analysis and Determinations**

##### *Negligible Impact Analysis*

NMFS has defined "negligible impact" in 50 CFR 216.103 as "... an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the

number of marine mammals that might be “taken” through behavioral harassment, we consider other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

To avoid repetition, the discussion below applies to all five species discussed earlier in this notice. In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment;
- The context in which the takes occur (*e.g.*, impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.*, depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, NMFS does not expect Point Blue's specified activities to cause long-term behavioral disturbance, abandonment of the haul-out area, injury, serious injury, or mortality:

(1) The takes from Level B harassment would be due to potential behavioral disturbance. The effects of the seabird research activities would be limited to short-term startle responses and localized behavioral changes due to the short and sporadic duration

of the research activities. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the research operations. Results from previous monitoring reports also show that the pinnipeds returned to the various sites and did not permanently abandon haul-out sites after Point Blue conducted their pinniped and research activities.

(3) There is no potential for large-scale movements leading to injury, serious injury, or mortality because the researchers must delay ingress into the landing areas until after the pinnipeds present have slowly entered the water.

(4) The limited access of Point Blue's researchers to Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during the pupping season.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Point Blue's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed seabird and pinniped research activities to avoid the resultant acoustic and visual disturbances. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact annual rates of recruitment or survival.

NMFS does not expect pinnipeds to permanently abandon any area that is surveyed by researchers, as is evidenced by continued presence of pinnipeds at the sites

during annual monitoring counts. 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 proposed mitigation and monitoring measures, NMFS finds that the total marine mammal take from Point Blue's seabird research activities will not adversely affect annual rates of recruitment or survival and therefore will have a negligible impact on the affected species or stocks.

#### *Small Numbers Analysis*

As mentioned previously, NMFS estimates that five species of marine mammals could be potentially affected by Level B harassment over the course of the proposed Authorization. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent approximately 18.04 percent of the U.S. stock of California sea lion, 1.61 percent of the California stock of Pacific harbor seal, 0.12 percent of the California breeding stock of northern elephant seal, 0.04 percent of the California stock of northern fur seals, and 0.06 percent of the eastern distinct population segment of Steller sea lion.

Because these are maximum estimates, actual take numbers are likely to be lower, as some animals may select other haul-out sites the day the researchers are present.

#### *Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses*

Section 101(a)(5)(D) of the MMPA also requires us to determine that the taking will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals implicated by this action. Thus, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of

such species or stocks for taking for subsistence purposes.

#### *Endangered Species Act*

No marine mammal species listed under the ESA are anticipated to occur in the action area. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required.

#### *National Environmental Policy Act (NEPA)*

We prepared an Environmental Assessment (DEA) analyzing the potential effects to the human environment from the issuance of an Authorization to Point Blue for their seabird research activities. The EA titled, *Issuance of an Incidental Harassment Authorization to Point Blue Conservation Science and Partners to Take Marine Mammals by Harassment Incidental to Seabird Research Conducted in Central California* is posted on our Web site at [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). NMFS provided relevant environmental information to the public through the notice of proposed Authorization (81 FR 15249, March 22, 2016) and considered public comments received prior to finalizing our EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS concluded that issuance of an Incidental Harassment Authorization would not significantly affect the quality of the human environment and prepared and issued a FONSI in accordance with NEPA and NOAA Administrative Order 216-6. NMFS' EA and FONSI for this activity are available upon request (see **ADDRESSES**).

#### **Authorization**

As a result of these determinations, we have issued an Authorization to Point Blue for the take of marine mammals incidental to proposed seabird and pinniped research

activities, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: May 26, 2016.

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Perry Gayaldo,

Deputy Director,

Office of Protected Resources,

National Marine Fisheries Service.

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