MARINE MAMMAL COMMISSION

14 December 2009

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Room 13635
Silver Spring, Maryland 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the Sonoma County Water Agency under section 101(a)(5)(D) of the Marine Mammal Protection Act. The applicant is seeking authorization to take small numbers of Pacific harbor seals, California sea lions, and northern elephant seals by harassment incidental to construction and maintenance of a lagoon outlet channel at the Russian River Estuary in Jenner, California. The Commission also has reviewed the National Marine Fisheries Service's 12 November 2009 *Federal Register* notice (74 Fed. Reg. 58250) requesting comments on its proposal to issue the authorization, subject to certain conditions.

The Service believes that noise and visual disturbance associated with construction and maintenance activities and periodic sandbar breaching events (i.e., artificially breaching the barrier beach at the Russian River/Pacific Ocean interface to minimize the potential for flooding) and proposed monitoring activities could result in the taking of the three pinniped species. The Service anticipates that taking would be limited to animals being startled or alerted by the presence of construction crews or use of equipment such as bulldozers and excavators, possibly causing them to avoid or be flushed from haul-out sites. The Service also expects that the applicant will implement proposed monitoring and mitigation measures, including slow and cautious approaches by agency crews and construction equipment. In light of the types of taking that are anticipated and the mitigation measures that will be employed, the Service has preliminarily determined that the proposed activities will result, at most, in temporary modification of pinniped behavior and will have a negligible impact on the stocks.

RECOMMENDATION

Based on its review of the application and *Federal Register* notice, the Marine Mammal Commission concurs with the Service's preliminary determination and recommends that the National Marine Fisheries Service issue the requested authorization, subject to the inclusion of the proposed monitoring and mitigation measures.

Please contact me if you have any questions concerning this recommendation.

Sincerely,

Timothy J. Ragen

Timothy J. Ragen, Ph.D.
Executive Director

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FROM: Brenda Adelman for Russian River Watershed Protection Committee
P.O. Box 501 Guerneville, CA 95446 (707) 869-0410
DATE: 12-13-2009

TO: Dept. of Commerce National Oceanic and Atmospheric Administration
PR1.0648-XQ82

SUBJECT: RIN 0648-XQ82 Takes of Marine Mammals Incidental to Specific Activities: Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

Michael Payne, Chief, Permits, Conservation and Education division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

This letter provides comments on the above referenced notice of proposed incidental harassment authorization at the Russian River Estuary in Sonoma County CA-RIN 0648-XQ82- published in the Federal Register November 12, 2009.

These comments are submitted on behalf of Russian River Watershed Protection Committee. Our group has been in existence since 1980. We track water and wastewater issues on the Russian River with a focus on the lower river. Our office is in Guerneville CA, about 15 miles east of the Estuary. We are familiar with the Biological Opinion and water issues in general in our watershed. We have had numerous conversations with Dr. William Hearn of your agency about this topic.

We are writing in strong support of Norma Jellison's letter on this project which you should have received this morning. I read the entire letter and share her concerns. In fact, we had met previously to discuss this issue.

I'd like to reiterate that a lot more work needs to be done in assessing the impacts of this project on the seals. As Norma points out, the Russian is a managed river with the focus on water supply for the Urban Areas. The situation is complicated by the almost total LACK of management of agricultural diversions, many of which are illegally drawn.

This is compounded by the requirement in the B.O. to change State Law to permanently lower stream flows (Decision 1610) in the river. Our group took

pictures of the river weekly this last summer at the Monte Rio Bridge and Beach, about ten miles upstream of the Estuary. During the first Monday in October the mouth was opened. We got before and after pictures from the Bridge. We noted about a four foot drop in water level from one day to the next, after the mouth was opened. Will there be any impact on the seals under perpetually closed circumstances?

We don't want to repeat all of Norma's analysis other than to say she is very knowledgeable on this topic and her concerns should be addressed. Elinor Twohy's research over the years indicate that every time the mouth is closed, the seals disappear. When it opens, they come back. Besides the possible impacts to the pups, which Norma covers thoroughly, what will happen to the seals under permanent closure?

I would like to add another concern that is not addressed in Norma's letter. As Norma mentioned, there is a lot of human use at the beach along the mouth. It would be hard to imagine that construction would occur in just four days (assuming that is true and that unexpected problems don't arise) and that no maintenance would occur after that which might involve further disturbance. In addition, the project would have to be rebuilt next year and construction would occur again along with all the disturbance issues taking place this year.

How can any conclusions can be drawn at all about impacts to the seals, when the project descriptions are still rather vague. We are also unclear what water quality impacts might arise as a result of this project. All along the river there are signs of Ludwigia and other nutrient pollution. Blue green algae has been identified by the North Coast Regional Water Quality Control Board on the Monte Rio Beach. When flows are lowered on a permanent basis and the Estuary turned into a sink, what kind of pollution will result? What impact would that have on the seals?

While there have been many studies of Estuary water quality by conventional pollutants, there are still unknown water quality problems from unregulated chemicals discharged from various sources. We wonder how toxicity might accumulate and impact the seals if the Estuary is a full time sink for everything happening upstream. We are very concerned about endocrine disruptors in particular and would like to request studies on those when the Estuary is permanently closed.

Finally, the Russian River has been listed under the Clean Water Act as impaired for temperature and sediments. What are the potential impacts on the seals from these sources under permanently closed conditions?

We are sorry that we have to close here because we are running out of time. We would have liked to research some of these issues further and hope that some of your fine scientists can address our concerns.

Please acknowledge receipt of this letter.

Sincerely,

Brenda Adelman
Russian River Watershed Protection Committee

FROM: Diane Hichwa, Conservation Chair,
Madrone Audubon Society of Sonoma County
Email: dhichwa@earthlink.net
Telephone: 707-579-1182 (Santa Rosa) 707-785-1922 (Sea Ranch)
707-483-3130 (cell)

DATE: 12-13-2009

TO: Dept. of Commerce National Oceanic and Atmospheric Administration
PR1.0648-XQ82

SUBJECT: RIN 0648-XQ82 Takes of Marine Mammals Incidental to Specific Activities: Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

To: Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225

Our organization of 1700 members is concerned about the activities for the proposed channel diversion at the mouth of the Russian River. Activities of operating heavy equipment (e.g., bulldozers, excavators) will be disruptive to an entire ecosystem, not limited to marine mammals. Your permit addresses the marine mammal haulout but in actuality the entire ecosystem will be disturbed in the process. The haulout area is a large resting area for Brown Pelicans and Western Gulls; the area right inside the channel is a feeding and bathing area for same.

"NMFS found current water management practices, including those at the mouth of the Russian River, were jeopardizing the continued existence of some of the steelhead and salmon species and adversely modifying their critical habitat."

The Sonoma County Water Agency should be required to tackle the practices of Water diversions (many illegal) and pumping from streams for grape growing upriver. Such management should be required and alternatives exhausted BEFORE being allowed to do any legal harassment of wildlife.

FROM: Norma Jellison
PO BOX 1636, Bodega Bay CA

DATE: 12-13-2009

TO: Dept. of Commerce National Oceanic and Atmospheric Administration
PR1.0648-XQ82

SUBJECT: RIN 0648-XQ82 Takes of Marine Mammals Incidental to Specific Activities: Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

To: Michael Payne, Chief, Permits, Conservation and Education Division,
Office of Protected Resources, National Marine Fisheries Service,
1315 East-West Highway, Silver Spring, MD 20910-3225

This letter provides comments on the above referenced notice of proposed incidental harassment authorization at the Russian River Estuary in Sonoma County CA - RIN 0648-XQ82 - published in the Federal Register November 12, 2009.

I read the Federal Register notice, the Sonoma County Water Agency's (Water Agency) Application and the Pinniped Monitoring Plan. Each of the latter documents, accessed from the Federal Register page, is integral to understanding the Notice itself and the basis of its findings and recommendations. Unfortunately, the Application and the Monitoring Plan are incomplete as posted and thus deficient. Both documents lack figures that are important to reading and understanding them and the Notice that is constructed based on them. The Application is lacking Figures 1, 2, and 4 as well as Figures 5, 6 and 7 - all of the figures are referenced in text discussions of various matters and yet the page of the document for each of these figures is blank. This is also true of the Monitoring Plan where Figure 1 and 2 pages are blank. This missing information is materially significant and negatively impacts a clear understanding of the application and monitoring plan. I believe the entire Notice, Application and Monitoring Plan should be re-circulated and re-noticed in the Federal Register with the missing figures in place.

Nevertheless, I provide the following comments regarding the Notice as it is appears in the November 12, 2009 Federal Register.

I find the Description of the Estuary deficient in its omission of materially important information. The description of the Estuary is lacking in detail. Nowhere in the Notice or any of the other two documents it relies on is it stated that he Russian River is not a naturally flowing

stream, being controlled and/or substantially influenced by the Warm Springs Dam and the Eel River diversion.

Moreover, the River is impacted throughout its entire 60 mile length by agricultural withdrawals - legal and illegal, and legal and illegal discharges from wastewater treatment facilities and failing septic tanks. These are but a few examples among a host of other man induced alterations and uses that result in an extremely impaired river system.

Neither is the Estuary itself naturally functioning, being impaired by a concrete jetty, one major impairment, constructed by the Corps of Engineers in the 1930s and 40S that has resulted in major changes to the functioning of the Estuary and to the beach. As recently as 10 years ago, the jetty was fully exposed rock along its entire length with a +/- 5' drop off to the beach on its Estuary side, in all but flood season. Today, State Park rangers and lifeguards can drive their vehicles across the jetty to approach the mouth of the river as needed.

All of the above information is important information to disclose, as it has material input to the functioning of the mouth and the Estuary.

Moreover, while it is true that the Water Agency has breached the closed mouth for a number of years to prevent flooding of low lying homes and businesses in Jenner, these activities were accomplished without the benefit of a harassment permit from the NMFS.

Omission of this information is material. A complete understanding of the functioning of the mouth is lacking and the errant nature of nature itself - the weather, tides, winds - makes the proposed modifications nothing short of an experiment with significant adverse impacts to the Estuary environment and its inhabitants, both animal and human and most particularly the marine mammlas that call it home - the largest harbor seal colony in Sonoma County.

The beach is also an important resting place for local and migratory birds. At times hundreds of gulls,terns,cormorants and pelicans cover the beach. Some, like the Brown Pelican are species of special concern. The Brown Pelican was recently removed as an endangered species listing under the Endangered Species Act. The Brown Pelican is also a migratory bird, along with other migratory birds such as Heermans gulls that rest on this beach.

Statements in section titled Lagoon Outlet Channel Management to the effect that "Modifications to the barrier beach would be small departures from the existing beach and channel topography....and "the new channel would be similar to the channel configurations resulting from the previous breaching practices" and especially the statement "...and consistent with natural processes" are undocumented, unsupported by facts and highly speculative, given the untested nature of the proposed undertaking. Having watched the results of the breaching actions during the last ten plus years and especially the experimentation that has commenced during the last months of this year, I find these statements to be preposterous.

The mouth of the river is not a naturally functioning system. The upstream impacts of dams and diversions with the resulting changes in flows, coupled with the proposals to reduce inflows by up to 2/3 associated with Decision 1610, the Biological Opinion and the intermittent Emergency Orders of recent years, when coupled with the impacts on the functioning of the mouth due to the

presence of the jetty all point to the shear folly of such a label. This is all not even considering the unpredictability of the ocean conditions and their impact on the mouth and the beach. From my perspective, experiments with opening the mouth this summer and early fall and simulating the longer term plans for beach configurations were not successful.

Under Artificial Sand Bar Breaching there are statements that the Estuary may close **naturally** (emphasis added) throughout the year as a result of a barrier beach forming across the mouth of the Russian River. Times of year of the closures are stated as "...the mouth usually closes during the spring, summer and fall...." Again there is no mention of the upstream Warm Springs Dam outflow and Eel River diversions management influences on the river flows, or the State Water Quality Control Board Orders among other influences (drought years) on the functioning of the Estuary closures.

In the section Description of Marine Mammals in the Area of the Specified Activity there are a number of statements and conclusions that are questionable at best or are counter to the intentions of the Marine Mammal Protection Act, are incomplete or incorrect. For example, the statement that the Jenner Harbor Seal Colony is the largest in Sonoma County is true. It is also the largest north of Drakes Estero in Marin County to the mouth of the Eel River in Mendocino County. This fact gives a broader context for the importance of this colony. Further, not only has there been a daily census conducted since 1989 by the Elinor Twohy, resident naturalist of Jenner, the site has also been the subject of census monthly since 1987 by Dr Joe Mortenson who also has included it as part of the regional Harbor Seal census conducted since 1998 in association with Pt Reyes National Seashore. Finally, the site has been part of the state Harbor Seal survey and census effort (1982-1995 and 2004) by NOAA's NMFS and Southwest Fisheries Science Center et al.

One omission in the Description is the existence since 1985 = 24 years of a Seal Watch program by Stewards of the Coast and Redwoods (previously Stewards of Slavianka, the Russian name for the Russian River). Stewards is the non profit organization that supports the Russian River Division of California State Parks. This program of volunteers on the beach maintains MMPA distances from the Harbor Seal haulout, interpreting Harbor Seal behaviors in general and those of this colony specifically for State Park visitors. Moreover, the Seal Watch volunteers count the colony from the overlook prior to the beginning of each shift (an AM shift from 10-2 and a PM shift from 2-6 on weekends from March to Labor Day). This data entered on data sheets in a beach log maintained for each year of Seal Watch activity also includes weather and tide conditions, conditions of the beach and mouth, the presence of other marine mammals, birds etc, as well as births witnessed and harassment incidents by various sources. Seal Watch volunteers attend an annual training seminar conducted by State Park naturalists and other naturalists and scientists from for example, the Marine Mammal Center and Pt Reyes National Seashore and are also instructed on the beach by long time Seal Watch volunteers.

One incorrect statement is associated with stampedes and statements about the causes of fleeing the colony. Having personally been on the beach as a Seal Watch volunteer for 12+ years and otherwise observed the colony from the overlook at other times, I assert that stampedes are not infrequent as stated. In fact they occur often. Total flushing of the colony is often associated with people approaching too close to the haulout whether the mouth is open or closed. Some people ignore the signs posted on the beach warning not to approach the seals and citing the MMPA

(at times that Seal Watch volunteers are not present). It also occurs at times when kayaks, sailboats and motor boats approach too close to the haulout, and on occasion when the huge numbers of resting birds (gulls, terns, cormorants and pelicans) that frequent the beach lifting off in unison prompt total abandonment of the beach - fleeing into the river by the colony. Consulting Seal Watch records would likely document such incidents. Moreover, consulting with Elinor Twohy and her data would no doubt likewise confirm cases of full abandonment of the haulout due to harassment of various sources.

The statement "....Therefore, although the Agency's operations may harass pinnipeds present on the beach, it is likely many have left due to the presence of people...." is especially troubling. First of all, it is impossible to state unequivocally that on the day of a proposed Agency activity "..many.." (Harbor Seals) would have "left the beach due to the presence of people." Abandonment/flushing does NOT happen on a daily basis. While it does happen more often than suggested by the statement in the Notice, it is not constant. When Seal Watch is present, flushing or stampedes from people walking on the beach is pretty much eliminated. At other times, when Seal Watch is not present (weekdays), people actually observe the posted warning MMPA signs, thus flushing the seals does not happen all the time.

The conclusion that because not all Harbor seals during recent breaching activities have flushed and some remain while equipment is on the beach equates to "..Therefore, harbor seals at most would flush into the water in response to <u>maintenance activities</u> but may also remain alert or make small movements...." is mixing statements about breaching and maintenance. Comparing past actions by the colony associated with an occasional breaching of the mouth to 4 days in a row of machinery on the beach is comparing apples and oranges. And comparing the work to create the outlet channel - a major 4 day industrial event with people and machinery working on the beach and 2-3 days of maintenance - to what occurred with breaching activities up to this point in time is likewise unrealistic and unreasonable.

Most troubling in this respect is the statement "Implementation of the lagoon outlet channel, as required by the NMFS' Russian River Biological Opinion, has not yet begun, but the potential direct effects on harbor seals and their pups would be expected to be similar to artificial breaching activities as construction methods would be very similar." Comparing the occasional artificial breaching activities which to date for the most part occur on one day to 4 solid days of machinery and personnel on the beach for hours digging the outlet channel is not reasonable, realistic or an honest comparison. The impacts will in no way be similar. Implying they will be is beyond pure speculation and premature in nature. It is inappropriate at best and inaccurate at worst.

Another conclusion that is troubling is that associated with the impacts of the proposed activity on the pups and on mother pup relationships. First of all, the fact that the Jenner haulout is not a "designated pupping beach" is irrelevant. There have been pups born on this haulout every year since Seal Watch began its program (24 years). Pups on the beach have been documented by Mortenson in the scientific literature. I personally have observed pups being born on this beach, every year since I started Seal Watch over 12 years ago. The numbers vary from year to year, but I know of no year that no pups were born on this haulout. This past year (2009), I personally observed 2 pups born while on the beach on a Seal Watch shift. On April 25, I counted 18

pups from the overlook at the beginning of my Seal Watch shift. On May 1, the number of pups was 27 (Mortenson pers obs/count).

While the data may confirm the assertion that peak pupping occurs in early to mid May, that fact does not eliminate the potential for births after mid May when this lagoon outlet channel activity will begin. Statements that the "...the opportunity for mother/pup bonding is not expected to be impacted by implementation of the lagoon outlet channel or artificial breaching activities..." is pure speculation. I disagree with the logic statements that lead to this conclusion and thus I disagree with the conclusion. From the Notice: "The peak of pupping season is **likely** (emphasis added) mid-May in most years. Implementation of the lagoon will begin around May 15th. By this time bonding will have occurred. The number of artificial breaches in March April and May have been low in past and occur in a single day over several hours. Therefore (my added word) artificial breaching activities are not expected to impact mother/pup bonding." Comparing past **one day over several hours** activities that mostly DID NOT HAPPEN IN MARCH APRIL AND MAY to **4 days of nearly constant construction activity with heavy equipment and lots of personnel on the beach** beginning May 15 when it is likely pups are still being born, still nursing and definitely extremely vulnerable is unreasonable and the conclusion is logically unsupportable.

The literature evidences numerous studies of the importance of mother/pup bonding. Beyond the bonding time, this is a nursery! It is a critical place for the pups even after bonding is complete and they are on their own/weaned. And they would only be weaned IF, a big IF, they were born such that they would be weaned by mid May. This would not be the case for pups born the first weeks of May thru the 15th, let alone through the end of May, as nursing continues for up to 4 weeks. The nursing period, during which pups gain a pound a day, is crucial. Disturbance by humans or other sources of harassment can disrupt feeding, reduce milk intake and subsequent weight gain by the pup and ultimately threaten the pup's chance of survival after weaning. (SF Bay Seal Project Earth Island Institute undated pub). So the conclusion that the bond would be over is false in these cases, and the fact that pups could well still be being nursed on the haulout makes it problematic for this activity to ensue on May 15 while nursing is likely still in process. Even if one somehow (???) concludes that all bonding is over and all the pups are weaned, the importance of the haulout to the pups as a place to rest and be among the safety of numbers of adults is important and critical to the pups. Mother Harbor seals are not adapted to defend offspring from land-based dangers and will flush to the water. Pups, suddenly being forced off the beach by these activities at such a young and vulnerable time (mortality just after weaning and in the first year is high as it is) is problematic and could result in higher mortalities among the pups of this colony. Such results could be extremely detrimental to this haulout. A reminder that the haulout is the largest haulout in Sonoma County and north of Drakes Bay to the Eel River in Mendocino County.

The conclusion "NMFS has preliminary (sic) determined that impact to pinnipeds on the beach during Estuary management activities would be limited to short term (i.e. one day or less) behavioral harassment in the form of artificial alertness or flushing...." is inconsistent with the description of the activity as 4 days of construction activity. "...Further, the lack of evidence of permanent abandonment of the haulout despite Agency breaching the beach for years indicates long term or permanent abandonment of the haulout is unlikely..." This conclusion is premature. Comparing one day occasional breaching activities with 4 days of industrial

level activities associated with the lagoon channel outlet construction cannot logically lead to this conclusion.

In fact, using the impact on the colony of the lone male Elephant Seal (ES) that hauled out on this beach as a surrogate for this industrial level of activity leads to the opposite conclusion. The colony was originally a harbor seal storm shelter with a peak in numbers in the storms before breeding. The ES totally eliminated part of the Jenner colony annual cycle, the winter haulout, and then later the breeding haulout population when he lingered into breeding season (2007). Charts and graphs previously provided to NMFS document this impact. What was left during the ES occupation was the peak in molting. This is the time that the river is proposed to be kept closed. If that occurs it is likely, the haulout would fail then as the level of harassment associated with human interference would be significant. Again, the conclusion that outlet channel construction and maintenance activity is not expected to change the natural cycle of using the Jenner haulout on a daily basis and that modification of the habitat from the construction would be temporary in nature is premature at best and erroneous.

Comments in the Notice section Anticipated Effects on Habitat relative to salmonids and pinniped predation are troublesome. There is a statement that "These activities would result in physical alterations of the Jenner haulout but are essential to conserving and recovering endangered salmonids species (which are important prey for pinnipeds)." There is no scientific evidence/proof in the Biological Opinion that the proposed activities are in fact essential to conserving and recovering endangered salmonid species. In fact it is speculated that this activity will take place, will eliminate the Harbor Seal haulout and salmonids will be no better off than they were before this project ensued.

Of grave concern is the erroneous statement that salmonids are an important prey for pinnipeds and elsewhere that the increase in the rearing habitat quality ... And increaed salmonid abundance...ultimately provides more food for seals present in the action area is incorrect and disingenuous. Linda Hanson in her study (pub 1993) during the 1989-1991 extended years of river mouth closure due to drought, showed that salmonids make up a minor part of the Harbor seal diet. This was the case at a time when they were readily available as there was no outlet to the ocean making the salmonids trapped at the river mouth readily available prey for the haulout seals. The scat analysis portion of the Hanson study showed that Harbor seals at this site do not utilize salmon as a major prey species. To try to turn the negative impact on Harbor seals from this activity into a positive based on a specious argument that the Harbor seals will eat (and thus have a potential negative impact) on the very species that is the basis for the activity is disingenuous and patently absurd.

In conclusion, the IHA permit application in the Federal Register is based on many assumptions. Some are about overcoming the Pacific Ocean whims to engineer the sand bar at the mouth of the Russian River. Others are about the possible benefits of this engineering on the salmonids of the Russian River. Whether these assumptions are valid is highly speculative and moot.

More predictable are the responses of the major north coast colony of Harbor seals at the mouth of the Russian River to the manipulation of the bar. Commencing during the late pupping period at this colony, trains of personnel and machinery will travel down the bar for up to 4 days in

succession. To my knowledge this is an unprecedented act of sustained harassment by earth moving machinery on marine mammals. There are several likely consequence of driving bulldozers and/or excavators down the beach through the breeding and molting haulouts that form from March to July at the mouth of the Russian. The seals will certainly leave the beach in the short term, but perhaps in the long term as well. There is a well documented history of such flights to a variety of causes, including the occasional use of machinery to breach the river mouth. But most causes do not persist over a period of days and weeks. However, the colony was largely abandoned for several years in reaction to a single rogue Elephant seal for months during its winter haulout.

The ES appeared to be attempting to mate with the Harbor seals, pursuing and killing some of them, including pups. The heavy equipment is to be put in play on 15 May, when the seals are still assembled for breeding, pupping, and nursing. The arrival of industrial machinery at the end of the breeding period will certainly disrupt the colony. The nursery where mothers suckle and play with their young may be abandoned, since mothers can be the most reactive of Harbor seals to potential dangers. The critical period between birth and weaning may be interrupted by flight from the equipment. At the same time, loud noise from the equipment may mask the calls of Harbor seal pups that keep them together with their mothers in the Russian River, if they stay. If driven to the sea without their habitual nursery area, maintaining contact between mother and young will depend on hearing the calls of pups over the sound of the surf. Underwater, vibrations from the machinery may impact any mating stations of male Harbor seals, who display acoustically under water.

Statements regarding "....consideration being given to the beach environment, effort would be made to minimize the amount and frequency of mechanical intervention, thereby reducing disturbances to seals and other wildlife, as well as State Park visitors on the beach" are not bourne out by later descriptions and tables regarding the proposed activities. For example, no clustering of monitoring activities by boat (Table 5 in the Application) is proposed as a mitigation measure. Likewise, there is little note of the large numbers of State Park visitors that frequent this beach and would be negatively impacted by this activity. The Sonoma Coast State Beaches entertain approximately 4 million visitors each year, making it one of the most visited State Parks in CA. The mouth of the Russian River, where the river meets the sea is for the thousands that stop at the overlook on Route 1 to see it and to see the Harbor Seals, a very visceral connection between land and the sea. For some it is the closest they will ever get to the ocean and to its marine life as embodied in the Harbor Seal colony.

The worst case though highly likely scenario that may result from this activity is an often deserted beach with bulldozers and excavators displacing and replacing Harbor seals and the many many birds that rest on the beach. And ultimately all of this will eliminate a treasured site in a State Park and a Marine Reserve. The thousands of tourists and locals who stop at the overlook of the Russian River mouth to celebrate where the river meets the sea and the display of sea mammals and birds will see machinery at work instead of nature.

Widespread local opinion is that what needs engineering is not the bar, but the remains of a failed jetty at the mouth, which prevents it from closing naturally. Why isn't the jetty the first order of business? Rather than spend millions of dollars on a grand engineering experiment with likely adverse impacts on a 24 year old Harbor seal colony, the largest in Sonoma County and

north of Drakes Estero to the Eel River, and eliminate a major interpretation program for the Sonoma Coast State Beach, why not first eliminate the jetty doing less harm to the colony and see if that has a positive impact on the river dynamics and the habitat for the iconic salmonids?

If NMFS proceeds with the issuance of this IHA, as seems inevitable, many will be watching and reviewing the monitoring. If the colony is abandoned or pups are adversely impacted due to the lagoon outlet channel construction and maintenance activities, we will be calling for the revocation of this permit.

Sincerely,

Norma Jellison

FROM: Dian Hardy
Guerneville

DATE: 12-14-2009

TO: Dept. of Commerce National Oceanic and Atmospheric Administration
PR1.0648-XQ82

SUBJECT: RIN 0648-XQ82 Takes of Marine Mammals Incidental to Specific Activities: Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

I write as the founder of the Sealwatch program, which has safeguarded the harbor seal haulout since 1984. While I can do little better than to repeat and incorporate the comments made by Norma Jellison, I hope to add something of value from my perspective. (There may be other comments which I've not had the opportunity to read - I was unable to access comments via the URL given on page 58249 of the Federal Register notice - http://www.nmfs.noaa.gov/pr/permits/incidental.htm).

The harbor seals have been able to remain at the mouth of the Russian through the dedication of volunteers working under the nonprofit umbrella of Stewards of the Coast and Redwoods and State Parks and Recreation. Previously the presence of beach visitors and dogs caused the seals to flee the haulout regularly. Following a major sewage spill into the Russian, I organized the first watches and have stayed in as close touch with the work as I could considering that my perspective is spiritual and mythopoetic rather than scientific and bureaucratic. It seems extraordinary to me that it can be asserted that a harbor seal population of some 30,000 individuals statewide "may be an indication that the population is reaching its carrying capacity." The nearest city to the haulout, Santa Rosa, has a population of over 100,000 yet our culture celebrates such growth until rising poverty and crime rates create alarm and the usual scapegoating of the poor and minorities. I assert that much the same is happening here. Rather than look to development as the root cause of the loss of the fishery, the seals and their inherent claim to a place of rest and safety will be sacrificed to what I view as a failure of the public trust.

Am I the only one to have difficulty believing that a perched lagoon and the haulout can co-exist? While Linda Hanson's study of the seal's diet showed low predation on salmonids, the present scheme would place salmonids constantly within the lagoon while driving away harbor seals at times when they are most vulnerable - i.e., pupping and molting. Were the seals able to remain despite the incursions of men and machines, surely they would be drawn to the abundance of prey in the lagoon! If I am correct this entire exercise of requesting and obtaining an IHA permit is a sham. In my opinion, upriver impacts of agriculture, timbering and

residential and commercial development have not received anywhere near the amount of attention they deserve; as one result of this oversight, the haulout could be lost.

Of course, the major impact is the construction of Warm Springs Dam itself, which allowed development of Sonoma County while destroying the native salmonid runs and removing the traditional gathering grounds of native peoples. No amount of mitigation can offset these losses. They are done now forever. Since our culture does not have the native American perspective of looking generations ahead but seeks immediate and ongoing profit, what has been sown is reaped - a deranged environment and what I whimsically call the Humpty Dumpty School of Resource Management - it cannot be put back together again yet attempts to address the effects continue to be made. For those serious and dedicated people within the federal and state agencies charged with safeguarding the natural world, this must be, at the least, discouraging.

To me, this entire scheme is wrong-headed. In its place, I urge the removal of the jetty which prevents the mouth from closing naturally. Why spend millions of dollars on an experiment which could cause the loss of a much used and needed harbor seal haulout - the largest in Sonoma County and northward? Consider: if the haulout is abandoned, if the project fails in its stated goals, what has been lost is irreparable. It is time to look at the underlying reasons for the loss of the salmonid populations and address these directly. Work with the local community to find a holistic solution which will allow the river to once again fill with salmon and will allow the seals their resting place at river's edge. To do less is to betray the nature that nourishes us all.

Dian Hardy
Guerneville

FROM: Jessica Martini-Lamb
Principal Environmental Specialist, Wildlife Biologist
Sonoma County Water Agency

DATE: 12-14-2009

TO: Dept. of Commerce National Oceanic and Atmospheric Administration
PR1.0648-XQ82

SUBJECT: RIN 0648-XQ82 Takes of Marine Mammals Incidental to Specific Activities: Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

Michael Payne, Chief, Permits, Conservation and Education division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Thank you for the opportunity to comment on the National Marine Fisheries Service's notice of proposed incidental harassment authorization for the Sonoma County Water Agency's (Agency) application for Russian River Estuary Management Activities under the Marine Mammal Protection Act. There are several points in the Federal Register notice (vol. 74, no. 217, November 12, 2009) that the Agency would like to clarify:

1. Page 58249, Summary of Request: Near the end of this section, the summary mentions that Goat Rock State Park volunteer docents monitor harbor seals at the Jenner haulout. These monitors are part of the Stewards of the Coast and Redwoods, which works with the California State Parks Russian River District. Goat Rock State Park is part of this District. Stewards oversees the Seal Watch program. In addition, Stewards volunteers are assisting the Agency in a pinniped monitoring program as described in the monitoring plan submitted with the Agency's IHA application.
2. Page 58250, Description of the Specified Activity: NMFS issued the Biological Opinion finding that estuary management activities are likely to jeopardize the continued existence of threatened central California coast steelhead and central California coast coho salmon and adversely modify their critical habitats. Central California Chinook salmon and their critical habitat were not included in the jeopardy opinion.
3. Page 58251, Description of the Specified Activity, Artificial Sandbar Breaching: In addition to natural breaching, the Agency has mechanically breached the sandbar at the mouth of the Russian River since 1995. Prior to 1995, artificial breaching was done by the County of Sonoma Public Works Department and by local citizens.

4. Page 58253, Potential Effects on Marine Mammals: The word “closed” is missing from the following sentence, “ In all five years of monitoring, the number of seals hauled out on the barrier beach was generally low when it was [closed] and then quickly increased once the barrier beach was artificially breached…”

Thank you for your consideration.

Jessica Martini-Lamb

Principal Environmental Specialist, Wildlife Biologist

Sonoma County Water Agency

FROM: Mary Follis

DATE: 12/13/09

TO: Dept. of Commerce National Oceanic and Atmospheric Administration
PR1.0648-XQ82

SUBJECT: RIN 0648-XQ82 Takes of Marine Mammals Incidental to Specific Activities: Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

Michael Payne, Chief, Permits, Conservation and Education division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

This letter is in response to the incidental harassment authorization at the Russian River Estuary.

I believe that the actions of using bulldozers at the Goat Rock State Beach to make adjustments to the Estuary may cause the Harbor seals to abandon their Spring and Summer pupping, molting and mating site. I also believe that the main problem with the health of the river which affects the Salmonid population lies upstream and out in the ocean.

Upstream, the water is being diverted for business purposes: Local Watershed groups have put the State on Notice: "Northern California River Watch of Sebastopol, Coast Action Group of Gualala, and the national environmental group The Center for Biological Diversity, sent notice of intent to sue California's State Water Resources Control Board for authorizing water diversions that harm federally protected salmon and steelhead trout in the Russian River and Gualala River watersheds. The water board is violating the Endangered Species Act by permitting water diversions in Mendocino and Sonoma counties, primarily for vineyards, that adversely affect salmon." The Sonoma County Gazette Volume 6, Number 12: December 10~ Jan 7, 2010

The Salmon population has been subjected to poor water quality due to deforestation and overfishing in the ocean in the last several years, both situations created by business opportunities that continue to adversely affect the health of the river.

The Harbor seals are not the only populations that will be affected by the incidental harassment authorization. Resident birds of the coast such as Pelagic Cormorants, Brandt's Cormorants, Double- crested Cormorants, and migrating birds which include Brown Pelican, Caspian Tern, Elegant Tern, Heermans Gull, all use the mouth of the river as resting places.

During the spring and summer Seal Watch, a group of volunteers with Stewards of the Coast and Redwoods, protect the seals during the weekends, 10am-6pm. The birds rest on the same beach as the Harbor seals and thus are protected from disturbance. The birds as well as the seals are sensitive to disturbance from people on the land and boats in the water. The seals natural instinct and only protection is to escape into the water.

An example of harassment which negatively affected the Harbor seal haul-out occurred just a few year ago. During the time when the Elephant Seal (identified as "R1") was on the beach, the Harbor seals were continually flushed into the water and finally many did not return to the site while he was there. He returned twice each year on his annual migration. You may check the Seal Watch log sheets for the actual lowered numbers of hauled-out seals. Constant disturbance can cause abandonment of a haul out site.

I ask you to review your "incidental take" and look at the possibility of permanent negative affects to the birds and Harbor seal haulout.

Mary Follis

RECEIVED
12/15/09

December 10, 2009

Michael Payne
chief, Permits,
Observation and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Springs, Md. 20910-3225

Ref: Federal Register/Vol 74, Nov. 12, 2009/Notices

Sirs:

As a continual observer of the Russian River Estuary with daily records of harbor seal numbers, estuary conditions, and photographs depicting the changes that have transpired over the 20 year period that I--without fail--have monitored the area, I take exception to many of the statements in the Notice receives in the Fed. Register referenced above.

The complete record of the harbor seal site and its use, as well as documentation of disturbances/changes due to natural (barrier) or man-made activities, is available for your perusal, showing "before" and "after" photographs of the disturbances.

Due to the quantity of data "several thousand photographs), data record sheets, and pictures, they cannot be included here. They are completely at your disposal, and you will see that they refute statements made in the Federal Register.

The hefty influence of natural and man-made interference at the seal site (and rookery) cannot be overridden. May to September includes pupping season and the molting period, times that the seals cannot abide interference.

Please call me at: (707) 865-2762

Sincerely

Elinor G. Twohy
11060 Burke Ave. (Box 21)
Jenner, CA 95450