

Comment: The Marine Mammal Commission (Commission) requested clarification of certain issues associated with NMFS's notice that one-year Renewals can be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of Renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: The notice of the proposed initial IHA expressly notified and invited comment from the public on the possibility that under certain, limited conditions the applicant could seek a Renewal IHA for an additional year. The notice described the conditions under which such a Renewal request could be considered and expressly sought public comment in the event such a Renewal were sought. Further, since issuance of the initial IHA NMFS has modified the Renewal process to provide notice through the **Federal Register** and an additional 15-day public comment period at the time the Renewal IHA is requested. NMFS also will provide direct notice of the proposed Renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments.

We appreciate the Commission's suggestion that NMFS discuss the potential for IHA Renewals through a more general route, such as a rulemaking. However, utilizing the public comment process associated with IHAs is more efficient for the agency, while still providing for appropriate public input into NMFS' decision-making. Further, NMFS's recent modification to the Renewal process (*i.e.*, soliciting additional public comment at the time of a Renewal request) should alleviate the Commission's concern about the lack of additional public comment and need for a more general rulemaking.

For more information, NMFS has published a description of the Renewal process on our website (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>).

Preliminary Determinations

The seabird research and monitoring activities proposed by Point Blue are identical to those analyzed in the initial IHA, as are the planned number of days of activity, the method of taking, and the effects of the action. The potential effects of Point Blue's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activity in the initial IHA, NMFS determined that Point Blue's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than 13 percent of all stocks). The numbers of marine mammals proposed to be taken in this authorization are identical to those authorized in the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the California sea lion stock decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (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; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office,

whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue an IHA Renewal to Point Blue for conducting seabird research activities in Central California, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed Renewal, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: November 7, 2019.

Donna S. Wieting,

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

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COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, November 21, 2019.

PLACE: Three Lafayette Centre, 1155 21st Street NW, Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.cftc.gov/>.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202-418-5964.

Authority: 5 U.S.C. 552b.

Dated: November 12, 2019.

Christopher Kirkpatrick,

Secretary of the Commission.

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