



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Southwest Region
2800 Cottage Way, Room W-2606
Sacramento, California 95825-1846

In Reply Refer To:
08EVEN00-2017-CPA-0129

Incidental Harassment Authorization (IHA-17-01)

The California Department of Fish and Wildlife (CDFW), Central Region, 1234 East Shaw Avenue, Fresno, California 93710, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107 to take, by Level B harassment only, small numbers of southern sea otters (*Enhydra lutris nereis*) incidental to conducting a tidal marsh restoration project in Elkhorn Slough, Monterey County, California, contingent upon the following conditions:

1. This Authorization is valid from August 1, 2017, through July 31, 2018.
2. This Authorization is valid only for activities associated with a tidal marsh restoration project within the Minhoto-Hester Marsh in Elkhorn Slough, Monterey County, California, which are specified at 82 FR 6627 (January 19, 2017). Construction activities may occur at any time during the 1-year authorization window.
3. The only species authorized for taking, by Level B harassment, is the southern sea otter. Anticipated take levels are as follows: 200 potential takes (50 sea otters per day over a period of 4 days) from vibratory pile driving and 1,320 potential takes (10 sea otters per day over a period of 132 days) from subsequent construction activity. The taking of any sea otter in a manner prohibited under this Authorization must be reported within 24 hours of the taking to the U.S. Fish and Wildlife Service (Service) Southern Sea Otter Recovery Coordinator (805-677-3325).
4. The holder of this Authorization must notify the Southern Sea Otter Recovery Coordinator at least 48 hours prior to the start of construction activities.
5. Prohibitions
 - (a) The taking, by incidental Level B harassment only, is limited to southern sea otters. The taking by Level A harassment, injury, or death is prohibited and may result in the modification, suspension or revocation of this Authorization.

- (b) The taking of any southern sea otter whenever the required marine mammal mitigation, monitoring, and reporting measures specified at 82 FR 6627 and within this Authorization have not been fully implemented is prohibited.
- (c) The taking of any southern sea otter after anticipated take levels are reached is prohibited unless written permission is obtained from the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

6. Mitigation

- (a) A Service-approved biologist shall conduct mandatory biological resources awareness training for construction personnel. The awareness training shall be provided to all construction personnel to brief them on the need to avoid effects on marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.
- (b) A biological monitor approved by the Service shall monitor for marine mammal disturbance as described under #7 below.
- (c) To reduce the risk of potentially startling marine mammals with a sudden intensive sound, the construction contractor shall begin construction activities gradually each day by moving around the project area and starting tractors one at a time.
- (d) Biological monitors shall have authority to stop construction at any time for the safety of any marine mammals as described under #7(c) below.
- (e) In-water construction work shall occur only during daylight hours when visual monitoring of marine mammals can be implemented. No in-water work shall be conducted at night.
- (f) If sheet piles are used to isolate construction activities from tidal action, all piles shall be installed using a vibratory pile driver, and an exclusion zone shall be implemented. Because the area within which underwater sound pressure levels are expected to reach or exceed 190 dB re 1 μ Pa is less than a foot, the radius of the exclusion zone shall be set at a minimum of 49 feet to prevent the injury of marine mammals from machinery. Pile extraction or driving shall not commence (or re-commence following a shutdown) until marine mammals are not sighted within the exclusion zone for a 15-minute period. If a marine mammal enters the exclusion zone during sheet pile work, work shall stop until the animal leaves the exclusion zone.
- (g) If sea otters are present within the work area, they shall be allowed to leave on their own volition.
- (h) Fuel storage and all fueling and equipment maintenance activities shall be conducted at least 100 feet from subtidal and intertidal habitat.

7. Monitoring

- (a) A biological monitor approved by the Service and NMFS shall monitor for marine mammal disturbance. Monitoring shall occur at all times when work is occurring:
 - i. in water,
 - ii. north of a line starting at $36^{\circ} 48'38.91$ N $121^{\circ} 45'08.03$ W and ending $36^{\circ} 48'38.91$ N $121^{\circ} 45'27.11$ W, or
 - iii. within 100 feet of tidal waters.
- (b) When work is occurring in other areas, monitoring shall be implemented for at least the first 3 days of construction. Monitoring shall continue until there are 3 successive days of no observed disturbance, at which point monitoring may be suspended. Monitoring shall resume when there is a significant change in activities or location of activities within the project area or if there is a gap in construction activities of more than 1 week. In these cases, monitoring shall again be implemented for at least the first 3 days of construction and shall not be suspended until there are 3 successive days of no observed disturbance. Monitoring shall be reinstated immediately if any significant behavioral changes are noted during routine monitoring performed by staff of the Elkhorn Slough National Estuarine Research Reserve.
- (c) The biological monitor shall have the authority to stop project activities if marine mammals approach or enter the exclusion zone or if, in the professional judgment of the monitor, sea otters outside the exclusion zone display a significant and alarming reaction to construction activity.
- (d) The biological monitor shall have the authority to stop project activities if take exceeds the type or level of take anticipated.
- (e) Biological monitoring shall begin 0.5-hour before work begins and shall continue until 0.5-hour after work is completed each day.
- (f) Work shall commence only with approval of the biological monitor to ensure that no marine mammals are present in the exclusion zone.
- (g) Throughout construction activities that require a monitor, the biological monitor shall maintain a log that documents numbers of marine mammals present before, during, and at the conclusion of daily activities, following the monitoring protocol (Appendix B to the IHA application). The monitor shall record basic weather conditions and marine mammal behavior.

8. Reporting

- (a) A final report shall be submitted to the Service within 90 days of the conclusion of monitoring efforts. The report shall detail the monitoring protocol, summarize the data recorded during monitoring, and contain an estimate of the number of sea otters that may have been harassed.

(b) CDFW shall call the Monterey Bay Aquarium's sea otter 24-hour emergency line (831-648-4840) immediately upon sighting an injured sea otter in the vicinity of the construction site and notify the Service's Southern Sea Otter Recovery Coordinator by telephone within one hour of such a sighting. CDFW shall call the Monterey Bay Aquarium's sea otter 24-hour emergency line and notify the Service's Southern Sea Otter Recovery Coordinator no later than 24 hours after sighting a dead sea otter in the vicinity of the construction site. CDFW shall provide a description of the condition of the animal(s) or carcass(es), location, time of discovery, observed behavior (if alive), and photographic or video documentation, if available. In the unanticipated event that the construction activities clearly cause the injury or death of a sea otter, CDFW shall immediately suspend all activities and immediately report the incident by telephone to the Monterey Bay Aquarium's sea otter 24-hour emergency line and the Service's Southern Sea Otter Recovery Coordinator. CDFW shall not resume activities until notified by the Service by email, letter, or telephone.

9. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

10. Copies of this Authorization must be in the possession of the biological monitor(s) and on-site construction supervisor(s) when activities authorized by this Incidental Harassment Authorization are underway.



Paul Souza
Regional Director
Pacific Southwest Region
U.S. Fish and Wildlife Service

4-23-17
Date