

CALIFORNIA COASTAL COMMISSION

455 MARKET ST, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



F8

Prepared March 4, 2022 (for the March 11, 2022 Hearing)

To: Commissioners and Interested Parties
From: Kate Huckelbridge, Deputy Director
Subject: **Energy, Ocean Resources and Federal Consistency Division Deputy Director's Report for March 2022**

The following coastal development permit (CDP) waivers, immaterial CDP amendments, CDP extensions, emergency CDPs, and negative determinations for the Energy, Ocean Resources and Federal Consistency Division are being reported to the Commission on March 11, 2022. Pursuant to the Commission's procedures, each item has been appropriately noticed as required, and each item is also available for review at the Commission's office in San Francisco. Staff is asking for the Commission's concurrence on the items in the Energy, Ocean Resources and Federal Consistency Division Deputy Director's report, and will report any objections received and any other relevant information on these items to the Commission when it considers the report on March 11, 2022.

With respect to the March 11th hearing, interested persons may sign up to address the Commission on items contained in this report prior to the Commission's consideration of this report. The Commission can overturn staff's noticed determinations for some categories of items subject to certain criteria in each case (see individual notices for specific requirements).

Items being reported on March 11, 2022 (see attached)

Federal Correspondence

- CD-0006-20 – National Park Service, Point Reyes National Seashore - Update and Request for Extension of Time for Presentation of Water Quality Strategy for Commission Review

Immaterial Amendments

- E-12-012-A5, Extension of partnership with aquaculture researchers from University of California Santa Barbara (UCSB) and Ocean Rainforest, Inc. (ORI) for limited term planting, cultivation and harvest, for non-commercial purposes, of giant kelp (*Macrocystis pyrifera*) on 20 of the existing cultivation lines within Santa Barbara mariculture's state aquaculture lease (Santa Barbara County).

Waivers

- 9-22-0100-W, Emergency Permit condition of approval for follow-up Coastal Development Permit G-D-21-0032, the Santa Ana Regional Water Quality Control Board removal of invasive alga *Caulerpa prolifera*, from the China Cove area of Newport Bay (Orange County).
- 9-22-0174-W, Scripps Institution of Oceanography at University of California, San Diego proposal to temporarily deploy research instruments to study kelp hydrodynamics approximately one-mile offshore of Point Loma (San Diego County).

Administrative Items for Federal Consistency Matters, Negative Determinations

- ND-0031-21, Department of the Navy proposal to install a new temporary landing dock at Naval Weapons Station Seal Beach, Orange County, Action: Concur, 12/30/2021.
- ND-0004-22, NOAA's National Marine Fisheries Service (NMFS) proposed Guidelines for Safely Deterring Marine Mammals (Guidelines) under the authority of the Marine Mammal Protection Act, Coast wide, Action: Object, 3/4/2022.
- ND-0005-22, NOAA Channel Islands National Marine Sanctuary Draft Management Plan, Santa Barbara Count, Action: Concur, 3/1/2022.
- ND-0009-22, Department of the Navy proposal to conduct maintenance dredging at the Scripps Institute of Oceanography Nimitz marine facility berthing wharf and pier, Naval Base Point Loma, San Diego County, Action: Concur, 2/2/2022.
- ND-0013-22, Bureau of Land Management proposal to fill and armor an approximately 80 meter long gully at the Prosper Gully Repair Project, King Range National Conservation Area, Humboldt County, Action: Concur, 2/17/2022.
- ND-0014-22, US Fish and Wildlife Service proposal to replace an aging observation deck at the Seal Beach National Wildlife Refuge, Orange County, Action: Concur, 2/16/2022.



United States Department of the Interior



NATIONAL PARK SERVICE
Point Reyes National Seashore
1 Bear Valley Road
Point Reyes Station, CA 94956
Department of the Interior Region 10

IN REPLY REFER TO:

L7617

March 4, 2022

John Ainsworth, Executive Director
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

CD-0006-20 – National Park Service, Point Reyes National Seashore - Update and Request for Extension of Time for Presentation of Water Quality Strategy for Commission Review

Dear Mr. Ainsworth:

This letter is to update you on the status of the *General Management Plan Amendment for Point Reyes National Seashore and the North District of Golden Gate National Recreation Area* (GMPA), the water quality strategy and related matters, and to request a new hearing date.

On April 22, 2021, the California Coastal Commission (Commission) voted to conditionally concur with the Consistency Determination submitted by the National Park Service (NPS) for the GMPA. The conditions adopted by the Commission and agreed to by the NPS are set out in the Commission's letter of May 10, 2021.

Update on GMPA

Following the April 2021 Commission meeting, the NPS developed a modified preferred alternative and issued a Record of Decision (ROD) on the GMPA on September 13, 2021. Many of the modifications to the preferred alternative address concerns raised during the Commission meeting. These changes were presented to the Commission in the Executive Director's October 2021 report. Changes related to more robust requirements for ranch operations and additional restrictions on diversification activities will increase the certainty of water quality protections and reduce environmental impacts from dairy operations and forage production. The modified preferred alternative also made improvements to the management of free-ranging elk herds (see below). These changes are responsive to public concerns and conform to the Biological Opinions issued by federal wildlife agencies.

Since the release of the ROD, the NPS has met with ranchers to begin identifying operational and infrastructure needs to further improve resource conditions. While the NPS has made progress toward implementation of the GMPA, the fact that the ROD was not issued until late

September and the recent filing of a lawsuit over the GMPA have delayed our timeline for issuing leases under the GMPA. As a result, the NPS will not be issuing any long-term leases under the GMPA at this time and will instead issue short-term (1 or 2 year) lease extensions to ranchers. In order to achieve some of the environmental benefits of the ROD's modified preferred alternative, the NPS intends to include some operational changes in the short-term leases including:

- discontinuation of previously permitted diversification activities not identified in the GMPA ROD (e.g. no chickens without separate permit request and compliance review),
- managed closure of silage on approximately 800 acres,
- cessation of grazing on Allotment 4 (approximately 580 acres),
- conversion of Allotment 19 to seasonal grazing only,
- closure of McClure Dairy operation at I Ranch.

Revised Hearing Date

The condition related to the development of a Water Quality Strategy included a schedule for presenting the first-year version of the strategy to the Commission. During the April 2021 hearing, the parties anticipated that an appropriate time to hold a Commission hearing on the first-year version of the strategy was in April 2022 because the NPS contemplated issuing long-term leases under the GMPA on or before July 2022. This was reflected in the Commission's May 10th letter which stated "[S]ubmission of the first-year version of the strategy will be prior to NPS approval of any leases under the GMPA."

The NPS formally requests an extension of time for our presentation on the Water Quality Strategy (and Climate Action Strategy) to the Commission. An extension is appropriate because the issuance of long-term leases under the GMPA has been delayed for at least one year. Moreover, the NPS is not in a position to answer questions from the Commission on matters that are now the subject of federal court litigation. The NPS will work with Commission staff to schedule a new date for formal presentation to the Commissioners. The NPS will not issue any long-term leases under the GMPA before the Water Quality and Climate Action Strategies are presented to the Commission.

Despite the delay related to long-term leases, the NPS has been working diligently on the Water Quality and Climate Action Strategies and is able to provide the following status update to the Commission.

Water Quality Strategy

The Water Quality Strategy will include two primary components, (1) a water quality monitoring program with future iterations identifying more operation specific infrastructure planning and (2) implementation actions. The NPS is currently drafting the proposed monitoring component of the Water Quality Strategy. The NPS has looked to existing neighboring water quality monitoring programs to develop the approach for this monitoring effort. The NPS currently maintains a number of sites within the Tomales Bay watershed that are monitored and reported through San Francisco Bay Regional Water Quality Control Board Tomales Bay watershed program, using peer-reviewed field sampling, QA/QC, data handling and data management

protocols developed by the NPS San Francisco Bay Area Network Inventory and Monitoring Network (NPS 2006 – available online <https://irma.nps.gov/DataStore/DownloadFile/581124>). The NPS intends to expand this sampling regime to include the coastal sites that were sampled between 2000 and 2013 and reported on in the GMPA and other publications. The NPS believes that this approach will be complementary to existing coordinated efforts within the area and that the data will inform ongoing management of these coastal areas.

Monthly water quality monitoring at a subset of long-term coastal watershed stations was reinitiated this winter as a pilot effort to rebuild our capacity to stand up a program in line with the draft Water Quality Strategy. This pilot effort has also allowed the NPS to establish new lab agreements for these expanded efforts, procure additional equipment, and train new field staff. The NPS has introduced this approach to Commission and Regional Board staff and intends to coordinate review of the monitoring strategy with agency staff in the coming months.

Additionally, the NPS is coordinating with partners to continue participating in Marin County's Ocean and Bay Water Quality Testing Program. Sampling outside the seasonal April to October sampling window is ongoing. Two stations in the planning area (Drakes Beach and Drakes Estero) were maintained by partners during the past few years, and the NPS is now coordinating to support these efforts. The NPS may also consider additional marine sites for this program.

Ranch Infrastructure and Utilities Conditions

NPS staff conducted initial meetings with individual ranch operators in the fall of 2021 to set the framework for development of new leases under the GMPA. These first meetings were a review of current operations and infrastructure and included a discussion of the lease and appraisal development process under the GMPA.

The NPS has also been coordinating with other agencies to evaluate the condition of ranch utility systems and operations. In February 2022, the San Francisco Bay Regional Water Quality Control Board conducted inspections of all dairy operation in coordination with NPS. The NPS has also coordinated with the County of Marin to evaluate septic systems within some of the historic ranch core areas. These inspections will aid in identifying any short and long-term infrastructure improvements and management changes to those operations that will further protect water quality.

Climate Action Strategy

The actions during the past year that have directly reduced air quality emissions under the GMPA result from modifications to the preferred alternative adopted in the September 2021 ROD. The ROD included the removal of 691 dairy animals (resulting from the closure of McClure Dairy in May 2021), and the removal of 9,000 chickens. Appendix C of the ROD identified that these two actions would result in a 24-27% reduction in NH₃, a 15-17% reduction in VOC, a 16% reduction in CO₂e, and a 17% reduction in PM_{2.5} from the analysis presented in the Final EIS for alternative B. Any further reductions in authorized dairy animals would result in further reduction.

Infrastructure and utility condition assessments developed to inform future leases under the GMPA would also include identification of systems meant to address potential air quality emissions. While there are proven technologies for large scale operations, local organizations are working to develop affordable and effective systems that may be appropriate for the scale of the dairy operations in the GMPA planning area. The NPS anticipates that there would be partnership opportunities for ranch operators to pursue these technologies and would pursue such opportunities with implementation of new leases under the GMPA.

Other Matters

Although not adopted as a condition in the Commission's concurrence letter, the NPS agreed to provide the Commission with an annual report on three other topics. The following constitutes the annual report on these topics.

Status of Free Ranging Tule Elk Herds in the GMPA Planning Area

In the ROD, the NPS identified a management threshold for the Drakes Beach herd at 140 animals (revised from 120 animals as presented in the Consistency Determination Hearing). The NPS has completed the 2021 population census for the Drakes Beach herd. The census indicates that the Drakes Beach herd consists of 151 animals.

The ROD incorporated the terms of August 2021 government-to-government partnership agreement (General Agreement) between the NPS and the Federated Indians of Graton Rancheria (FIGR). Under the General Agreement, the NPS will coordinate elk management efforts in the Seashore with FIGR. The ROD also indicated that the NPS would consult with the California Department of Fish and Wildlife on the management of the Drakes Beach herd. The NPS is currently engaged in government-to-government consultation (confidential) with FIGR under the General Agreement regarding the implementation of management actions for the Drakes Beach herd. At this time, the NPS does not intend to initiate reduction of the Drakes Beach herd to a population threshold of 140 individuals.

Management of Tule Elk in the GMPA Planning Area

As identified, the NPS has not taken any management actions with respect to tule elk in the GMPA Planning Area.

Drought Response

Point Reyes National Seashore and Marin County were under extreme drought from 2020 and through much of 2021. On May 17, 2021, the Marin County Board of Supervisors declared a drought emergency, and on July 8, 2021, the State of California made a similar declaration for Marin County. The drought rating of Exceptional (D4) persisted for much of 2021 in Marin County.

The NPS's drought management efforts have focused on maintaining resource conditions related to residual dry matter and on other concerns such as water use. This heightened

drought response strategy continues into 2022. Since the Commission hearing, the NPS required ranch operators to identify actions to address drought conditions. Most ranchers decreased their herd size by approximately 20% to address the drought impacts to grazing operations and forage production. Other infrastructure improvements to support drought resilience included improving livestock water supply on two allotments and increasing storage capacity at one allotment. Riparian restoration efforts, including the planting of native species, occurred at two allotments. The NPS also supported continued annual management of high priority invasive species to protect resources and maintain ecological integrity of grasslands. In 2021, invasive species management efforts were conducted on seven ranch allotments.

Annual Residual Dry Matter (RDM) monitoring was conducted in the fall of 2021. The NPS assessed conditions on 43 long-term transects and visually mapped conditions on more than 18,000 acres of ranch lands. Despite the extreme drought conditions, 65% of transects (28 out of 43) and nearly 78% of visually mapped ranch areas (14,085 of 18,169 acres) maintained RDM at or above the park's 1,200 pound per acre standard. These results were far better than the RDM monitoring results observed during the drought of 2014-16 and reflect the heightened awareness and proactive response by the NPS and park ranchers to the current drought. The NPS continues to monitor conditions in 2022 and has requested ranchers to identify additional measures they will take this year should drought conditions worsen.

The NPS looks forward to coordinating with staff on the development of the monitoring component of the Water Quality Strategy. Additionally, the NPS will keep Commission staff apprised of the ongoing litigation and how that may continue to affect any potential actions by the NPS under the GMPA.

Sincerely,

Craig Kenkel
Superintendent

Cc:
Dr. Kate Huckelbridge, Deputy Director and Tribal Liaison
Cassidy Teufel, Federal Consistency Coordinator

CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION
455 MARKET STREET
SUITE 300
PH (415) 904-5200 FAX (415) 904-5400
WWW.COASTAL.CA.GOV



February 25, 2022

**NOTICE OF PROPOSED IMMATERIAL PERMIT
AMENDMENT**Coastal Development Permit Amendment No. **E-12-012-A5**

To: All Interested Parties

From: John Ainsworth, Executive Director

Subject: Permit No. **E-12-012-A1** granted to **Santa Barbara Mariculture Company** for: installation and operation of a 72 acre shellfish aquaculture facility off the coast of Santa Barbara.

Project Site: 0.75 miles offshore coast of Arroyo Burro County Beach Park in Santa Barbara; State Water Bottom Lease No. M-653-02

The Executive Director of the California Coastal Commission has reviewed a proposed amendment to the above referenced permit, which would result in the following change(s):

Extension of partnership with aquaculture researchers from University of California Santa Barbara (UCSB) and Ocean Rainforest, Inc. (ORI) for limited term planting, cultivation and harvest, for non-commercial purposes, of giant kelp (*Macrocystis pyrifera*) on 20 of the existing cultivation lines within Santa Barbara Mariculture's state aquaculture lease.

FINDINGS

The Executive Director has determined this amendment to be IMMATERIAL within the meaning of section 13166(b) of the Commission's regulations.¹ Pursuant to section 13166(b)(1), if no written objection to this notice of immaterial amendment is received at the Commission office listed above within ten (10) working days of mailing said notice, the determination of immateriality shall be conclusive, and the amendment shall be approved (i.e., the permit will be amended as proposed).

Pursuant to section 13166(b)(2), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive

¹ The Commission's regulations are codified in Title 14 of the California Code of Regulations.

Notice of Proposed Immaterial Permit Amendment

E-12-012-A5

director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the amendment shall not be effective until the amendment and objection are reported to the Commission at its next regularly scheduled meeting. If any three Commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the Commission to be reviewed as a material amendment at a subsequent Commission meeting. If no three Commissioners object to the executive director's designation of immateriality, that designation shall stand, and the amendment shall become effective.

Pursuant to section 13166(b)(3), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the amendment application shall be referred to the Commission to be reviewed as a material amendment at a subsequent Commission meeting.

The Executive Director has determined this proposed amendment to be "immaterial" for the following reason(s):

- All planting, inspection and harvest activities would be carried out consistent with the relevant marine resource protection conditions and requirements of CDP No. E-12-012-A1, Water Quality Certification Number 34218WQ41, Department of the Army Permit No. SPL-2018-00684-TS and Scientific Collecting Permits issued by the California Department of Fish and Wildlife (SCP S200500001-20050-001 and SCP S-183050002-18305-001).
- The species of kelp proposed to be cultivated is endemic and native to the California marine environment and abundant throughout Santa Barbara County.
- Cultivation of this species would result in only minor changes to the cultivation equipment and aquaculture operations approved by the Commission in CDP No. E-12-012-A1.
- Santa Barbara Mariculture Company's 2019 and 2020 Benthic Survey and Biofouling Monitoring Reports demonstrated that its operation has not resulted in alteration of the seafloor habitat within its lease area or other adverse impacts to marine biological resources.
- All kelp planted and cultivated by UCSB and ORI researchers would be fully harvested and removed from the ocean no later than December 31, 2023 and prior to reaching maturity (capable of reproduction).
- All planting, harvest and cultivation activities carried out by UCSB and ORI researchers would be a continuation of those previously authorized by the Commission through CDP Amendment Nos. E-12-012-A2 and E-12-012-A4.
- All kelp planted and cultivated by ORI would be grown from wild-collected reproductive material from natural kelp beds in the local area following the requirements established by the California Department of Fish and Wildlife through a Scientific Collecting Permit and would be fully collected and removed from the ocean no later than December 31, 2023.

Notice of Proposed Immaterial Permit Amendment

E-12-012-A5

- All kelp cultivation and research activities by UCSB and ORI researchers would be completed by December 31, 2023 and all associated equipment, kelp and other materials (not including Santa Barbara Mariculture's cultivation lines, buoys and anchors) would be removed by that date.
- As described in Santa Barbara Mariculture Company's 2022 Anchor Survey Plan, all existing longline anchors in use for more than ten years would be replaced no later than July 2022 and all existing anchors in place for less than ten years would be replaced on or before ten years. In addition, visual inspections of longline tension and orientation would be carried out during each visit to the facility and any indication of anchoring or maintenance issues would be immediately addressed.

If you wish to register an objection to the processing of this amendment application as an immaterial amendment, please send the objection in writing to the address above.

If you have any questions about this notice, please contact Cassidy Teufel at Cassidy.Teufel@coastal.ca.gov.

cc: Commissioners/File

CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION
455 MARKET STREET
SUITE 300
PH (415) 904-5200 FAX (415) 904-5400
WWW.COASTAL.CA.GOV



March 1, 2022

Coastal Development Permit De Minimis Waiver Coastal Act Section 30624.7

Based on the project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Code of Regulations. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

Waiver: 9-22-0100-W

Applicant: Santa Ana Regional Water Quality Control Board

Location: Offshore China Cove Area, Lower Newport Bay

Proposed Development: Under Emergency Permit No. G-D-21-0032, the Santa Ana Regional Water Quality Control Board removed an invasive alga *Caulerpa prolifera*, from the China Cove area of Newport Bay. The *C. prolifera* removal took place through hand collection and the use of a suction hose, powered by a hydraulic pump. Water, sand and *C. prolifera* was pumped to the beach in China Cove, and directed into holding tanks for dewatering. The discharged water was then routed above the high tide line and exit into a geotextile filter bag. The water was gravity filtered through the sand berm before returning to China Cove. Care was be taken to avoid removal of native algal species and eelgrass throughout the *C. prolifera* removal process. Diver surveys and *C. prolifera* removal were scheduled for every one to two weeks depending on the number of *C. prolifera* finds per survey. This waiver satisfies the Emergency Permit condition of approval for a follow-up Coastal Development Permit.

Rationale:

- During diver surveys *C. prolifera* was removed by hand and removal of native algal species was avoided.
- Removal of invasive *C. prolifera* protects the coastal environment and habitat of Newport Bay and also protects public recreation at China Cove.

Coastal Development Permit De Minimis Waiver
9-22-0100-W

The proposed development did not adversely impact coastal resources, public access, or public recreation opportunities, and is consistent with past Commission actions in the area and Chapter Three policies of the Coastal Act.

This waiver will not become effective until reported to the Commission at its March meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the California Code of Regulations. The Notice of Pending Permit shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

Sincerely,

John Ainsworth
Executive Director

Original on File signed by:

Cassidy Teufel
Manager

cc: File

CALIFORNIA COASTAL COMMISSION

ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION
455 MARKET STREET, SUITE 300
PH (415) 904-5200
FAX (415) 904-5400
WWW.COASTAL.CA.GOV



February 25, 2022

Notice of Coastal Development Permit De Minimis Waiver Coastal Act Section 30624.7

Based on the project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Code of Regulations. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

Waiver: 9-22-0174-W

Applicant: Scripps Institution of Oceanography at University of California, San Diego

Location: Approximately one-mile offshore Point Loma, San Diego County

Proposed Development: Researchers at the Scripps Institution of Oceanography (SIO) at the University of California, San Diego propose to temporarily deploy research instruments to study kelp hydrodynamics approximately one-mile offshore of Point Loma in San Diego County. Two wave measurement buoys would be deployed at the ocean surface and two current monitoring units (ADCP/ADV units) would be deployed on the ocean floor at a depth of between 30 and 100 feet. The ADCP/ADV units would be made of a metal or plastic frame approximately two feet in diameter and one foot tall. The ADCP/ADV units would be placed by divers on sandy substrate and secured to the ocean floor using metal weights. The research instruments are proposed to collect oceanographic data for two to three months, including data on currents, temperature, dissolved oxygen, pressure, and pH. Divers would conduct maintenance checks on the ADCP/ADV units and download data weekly. Following the two to three month data collection period, all instruments would be collected and removed.

Rationale: For the following reasons, the proposed development will not adversely affect coastal resources, public access, or public recreation opportunities, and is consistent with past Commission actions in the area and Chapter Three policies of the Coastal Act:

- Multiple extensive surveys of the project area show soft bottom sea floor (fine sand, silt, and clay) where the ocean floor instruments are proposed to be

Coastal Development Permit De Minimis Waiver
9-22-0174-W

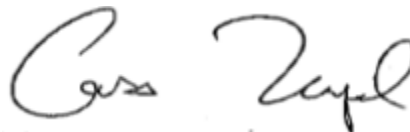
deployed. Divers would survey the site again prior to deployment to ensure selected sites are on soft bottom sea floor.

- Instruments would be deployed approximately 60 feet outside of kelp forest habitat at the project site.
- A vessel-based observer would monitor for marine mammals during installation and weekly maintenance of the instruments and enforce a safety zone around the project site. Activities that may pose an entanglement or injury risk to marine mammals would not be carried out if any marine mammals are observed within or approaching the safety zone.
- The ADCP/ADV units would be placed at a depth below substantial wave action and have no loose parts which could contribute to marine debris.
- Divers would assess the condition of the instruments during weekly maintenance trips. In the unlikely event that divers find any damage or marine debris from the instruments, the instrument would be repaired and marine debris collected and brought onshore for proper disposal.
- All instruments would be completely removed after no more than 3 months.
- Deployment would be coordinated with the U.S. Coast Guard in advance of deployment activities and a Notice to Mariners filed.
- The project vessel would have a Spill Prevention and Response Plan and appropriate equipment on board during all project installation, maintenance, and recovery activities.

This waiver will not become effective until reported to the Commission at its March 9-11, 2022 meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the California Code of Regulations. The Notice of Pending Permit shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

Sincerely,

John Ainsworth
Executive Director



Cassidy Teufel
Manager

cc: Commissioners/File

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



December 30, 2021

Jeff McGovern
Installation Environmental Program Director
Department of the Navy
Naval Weapons Station Seal Beach
800 Seal Beach Boulevard
Seal Beach, California 90740-5000

Re: Negative Determination No. ND-0031-21: Placement of Temporary Landing Dock,
Naval Weapons Station Seal Beach, Orange County

Dear Jeff McGovern:

We have received your letter dated December 14, 2021, in which you have determined that the above-referenced proposal to install a new temporary landing dock at Naval Weapons Station Seal Beach would have no adverse effect on coastal resources for the reasons identified in Negative Determination No. ND-0031-21. In addition, the above-referenced proposal includes a timeline extension for the removal of the existing temporary floating dock, approved under ND-0007-20, to December 31, 2024. The Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations.

Please contact Alexis Barrera at alexis.barrera@coastal.ca.gov if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassidy Teufel".

CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



March 4, 2022

Kimberly Damon-Randall
Director, NOAA Fisheries Office of Protected Resources
NOAA's National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Re: National Negative Determination No. ND-0004-22: Guidelines for Safely Deterring Marine Mammals

Dear Director Kimberly Damon-Randall:

The Coastal Commission (Commission) staff has reviewed the above-referenced national negative determination, dated December 20, 2021, for NOAA's National Marine Fisheries Service (NMFS) proposed Guidelines for Safely Deterring Marine Mammals (Guidelines) under the authority of the Marine Mammal Protection Act. The proposed Guidelines include specific methods for safely deterring marine mammals, as well as prohibitions on methods that NMFS has determined would have significant adverse effects on marine mammals. The specific methods for deterring marine mammals fall under non-acoustic and acoustic deterrent types, which include:

Non-acoustic deterrent types:

- Visual
- Physical barriers
- Chemo-sensory
- Tactile: projectiles, manual, electrical, and water

Acoustic deterrent types:

- Impulsive: explosive and non-explosive
- Non-impulsive

Commission staff agrees with NMFS that guidelines for safely deterring marine mammals are needed to protect these species from adverse impacts. However, Commission staff disagrees that the proposed Guidelines would not have reasonably foreseeable effects on coastal resources of the California coastal zone and should be reviewed under the negative determination process. As established in Section 930.35 of the Coastal Zone Management Act regulations, negative determinations are to be limited to federal agency activities that will "not affect any coastal use or resource."

Commission staff have been working in collaboration with the coastal management agencies of Washington and Oregon to review this national negative determination and on February 9, 2022 had a joint call with NMFS staff to express a variety of concerns about the effects to coastal resources that would result from the Guidelines and establish a path forward that would not result in objection to the negative determination. Unfortunately, NMFS staff were unwilling to consider such a solution or to provide an extension to the

review period to allow for additional discussion. Because of the obvious and significant effects to coastal resources that would result from the Guidelines and the lack of progress working with NMFS staff, Commission staff are regrettably left with no choice but to prepare this objection letter. While we appreciate NMFS' dedication to working toward the goal of marine resource protection that it shares with the Commission and the objective of these Guidelines to help address ongoing threats to marine mammals, unfortunately, the Guidelines themselves fall short of that mark. In particular, staff believes that the recommendations for impulsive explosive deterrents do not adequately protect marine mammals from adverse impacts and that by encouraging these Guidelines to be implemented and those deterrent methods to continue to be used with minimal restriction, the proposed project would result in a wide range of significant effects to California's coastal resources.

The Commission has a long history of working to address the adverse effects to marine wildlife from elevated levels of underwater sound. In 1999, it objected to a NMFS consistency determination (No. CD-102-99), which proposed to test a pressure and sound wave generating pulse power device focused on deterring sea lions, due to anticipated adverse impacts to marine mammals, sea turtles, and other marine species. Inclusion in the proposed Guidelines of impulsive explosive deterrents with minimal limitations or protective measures raises similar concerns and would result in similar coastal effects.

Under the proposed Guidelines, impulsive explosive deterrents such as cracker shells, bird bombs, seal bombs, and underwater firecrackers are recommended for use in deterring non-Endangered Species Act pinniped species. Proposed precautions on the use of these deterrents are limited in the Guidelines and include: a visual scan for cetaceans within 100 m prior to deployment; a prohibition on seal bomb use if cetaceans are sighted within 100 m; a prohibition on seal bomb use when visibility is <100 m; detonation of seal bombs at least 20 m away from phocids and 2 m away from otariids; use of no more than one seal bomb per 3-minute interval per user; and no seal bomb deployment in front of a target marine mammal or in the middle of a group. Although these precautionary measures provide a basic foundation, other reasonable measures are not provided in the Guidelines. Such measures include limits on total numbers and duration of use of explosive deterrents; limitations on cumulative use by multiple users; limitations on types of use (deterrence vs catch separation); minimum efficacy thresholds; and limitations on use in areas and habitats of particular sensitivity (including critical habitat for Endangered Species Act listed species, marine protected areas, shallow waters likely to magnify sound waves, offshore of breeding colonies, haul-outs and rookeries, near seabird colonies, within sites known to support species known to be particularly sensitive to underwater sound such as harbor porpoise, beaked whales and southern resident killer whales, etc.). However, even if such measures had been included in the Guidelines, their implementation and the use of acoustic deterrents that would follow would still have significant effects on coastal resources.

Recent research led by the Scripps Institution of Oceanography and Monterey Bay Aquarium Research Institute investigating seal bombs - a type of impulsive explosive deterrent housed in a sealed cardboard tube which detonates underwater and is supported by the Guidelines - has been published showing the adverse impacts of these explosive devices on target pinniped and non-target cetacean marine mammals offshore of California, their extremely high usage, and demonstrating the need for further research and management of this deterrent (Krumpel et al. 2021, Simonis et al. 2020).

Explosive devices, such as seal bombs, can result in death, permanent hearing loss (PTS), temporary hearing loss (TTS), altered behavior, habitat exclusion, and can also mask biologically important sounds (Krumpel et al. 2021). Although NMFS has estimated

PTS onset thresholds for several marine mammals, recent research characterizing seal bomb explosion sounds found that they would exceed these thresholds at close ranges (Wiggins et al. 2021). In addition, new research also indicates that sea lion hearing sensitivity and susceptibility to temporary hearing loss is greater than previously acknowledged and assumed in the analysis provided in support of the negative determination (Kastelein et al. 2021). The lack of inclusion and consideration of this research means that NMFS' determination that the Guidelines will not result in coastal effects is not supported by an appropriately comprehensive analysis and the best available science.

Recently published research examining long-term data of underwater explosions in Southern California found that seal bombs were one of the primary anthropogenic noise sources affecting marine mammals, with high explosion counts detected up to 2,800 per day at nearshore sites and detection on more than one third of all recording days (Krumpel et al. 2021). Krumpel et al. (2021) found that during peak periods, explosions occurred multiple times per minute, meaning that marine mammals may not have been able to escape before experiencing PTS or TTS. Additionally, with such high frequency of seal bomb explosions, minimum silent intervals, as proposed in the Guidelines to help ensure that acoustic evaluation criteria are met, are likely not occurring underwater. With sound exposure levels reaching up to 189 dB, recurring explosions during these high peak periods can lead to cumulative negative impacts on marine mammals, including non-target species. The Environmental Assessment (EA) states that the proposed Guidelines can potentially lessen the impacts on the marine mammal species and stocks associated with improper use of deterrents, however the EA does not include an analysis on other uses of deterrents - such as seal bombs being used to split catch within nets. This additional use of seal bombs should be recognized and included in a cumulative analysis of adverse impacts in the proposed Guidelines.

Seal bomb noise was also detected within Monterey Bay National Marine Sanctuary, with peaks recorded up to 88 explosions an hour and 335 per day (Simonis et al. 2020). The Monterey Bay National Marine Sanctuary is an important environment for the harbor porpoise, one of the most acoustically sensitive and survival challenged marine mammals within California's coastal zone. In addition to PTS, harbor porpoises are sensitive to short and long term displacements from noise, which can increase their stress levels and decrease successful foraging. Due to their small size and high energetic needs, displacement and foraging failure pose a significant risk to fitness and survival. Another acoustically sensitive marine mammal that is adversely affected by high levels of underwater noise is the southern resident killer whale. This critically imperiled species is listed as endangered under the Endangered Species Act and frequently found within California's coastal zone from the central to northern coast. One of the primary threats to killer whale survival is the disturbance from anthropogenic noise, such as military activities, seal bomb detonations, and vessel traffic. This noise interference disrupts killer whales' hearing ability which they rely on to feed, communicate, and orient themselves. In a noisier environment, killer whales are also forced to expend more energy to call louder to be heard over the loud noise interference. Given these known and likely negative impacts from explosive acoustic deterrents on marine mammals within California's coastal zone, and without adequate limits on their usage or evidence of efficacy, the Commission has determined that the proposed Guidelines regarding impulsive explosive acoustic deterrents would have reasonably foreseeable effects to California coastal resources.

As the federal consistency regulations state at 15 CFR Section §930.34(a)(1), "Federal agencies shall provide State agencies with *consistency* determinations for all Federal agency activities affecting any coastal use or resource" [emphasis added]. Federal agencies shall determine which activities affect coastal uses or resources by "...looking at

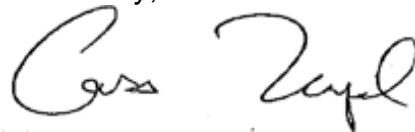
reasonably foreseeable direct and indirect effects on any coastal use or resource” [15 CFR §930.33(a)(1)]—the “effects test,” which is also applicable to projects outside of the coastal zone [see 15 CFR §930.33(c)]. Thus, the results of the effects test are a determining factor in assessing the need for a consistency determination. Based on the clear evidence of coastal effects that would result from implementation of the acoustic deterrents portion of the proposed Guidelines, Commission staff believes that NMFS should prepare and submit a consistency determination and that this consistency determination should provide a full analysis of the consistency of the proposed activity with the enforceable policies of California’s Coastal Management Program.

As a procedural matter, it is worth further noting that the Coastal Zone Management Act regulations do not provide for a “National Negative Determination” with only minimal and general assessment of coastal effects akin to that submitted by NMFS for the proposed Guidelines. As established in 15 CFR Section 930.35, except “in cases where Federal agencies will be performing a repetitive activity that a Federal agency determines will not have reasonably foreseeable coastal effects,” a negative determination must contain, at least, “a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the negative determination.” In this case, NMFS has not provided this necessary information in support of its negative determination.

Thus, based on the known and potential adverse impacts to coastal resources that would result from implementation of the proposed Guidelines and the inadequacy of its submittal, the Commission disagrees with your determination that the proposed Guidelines will not affect the coastal zone. We therefore object to your negative determination made pursuant to 15 CFR Section 930.35(d). To resolve this objection and address our stated concerns, we strongly encourage NMFS to submit a consistency determination and continue to further engage with Commission staff.

Please contact Alexis Barrera at alexis.barrera@coastal.ca.gov if you have any questions regarding this matter.

Sincerely,



CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



March 1, 2022

Michael R. Murray
Deputy Superintendent for Programs
NOAA Channel Islands National Marine Sanctuary
University of California Santa Barbara
Ocean Science Education Building 514, MC 6155
Santa Barbara, CA, 93106-6155

Re: Negative Determination No. ND-0005-22: Channel Islands National Marine Sanctuary
Draft Management Plan, Santa Barbara County

Dear Michael R. Murray:

We have received your letter dated December 17, 2021, in which you have determined that the above-referenced proposal for the Channel Islands National Marine Sanctuary's Draft Management Plan in Santa Barbara County would have no adverse effect on coastal resources for the reasons identified in Negative Determination No. ND-0005-22. The Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations.

Please contact Alexis Barrera at alexis.barrera@coastal.ca.gov if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassidy Teufel".

CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



February 25, 2022

B. E. Burket
Director of Public Works
Department of the Navy
Naval Base Point Loma
140 Sylvester Road
San Diego, California

Re: Negative Determination No. ND-0009-22: Nimitz Marine Facility Maintenance
Dredging, Naval Base Point Loma, San Diego County

Dear B. E. Burket:

We have received your letter dated January 28, 2022, in which you have determined that the above-referenced proposal to conduct maintenance dredging at the Scripps Institute of Oceanography Nimitz Marine Facility berthing wharf and pier would have no adverse effect on coastal resources for the reasons identified in Negative Determination No. ND-0009-22. The Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations.

Please contact Alexis Barrera at alexis.barrera@coastal.ca.gov if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassidy Teufel".

CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



February 17, 2022

Daniel Wooden
Acting Field Manager
Arcata Field Office
Bureau of Land Management
1695 Heindon Road
Arcata, CA 95521

Re: Negative Determination No. ND-0013-22: Prosper Gully Repair Project, King Range National Conservation Area, Humboldt County

Dear Daniel Wooden:

We have received your letter dated February 8, 2022, in which you have determined that the above-referenced proposal to fill and armor an approximately 80 meter long gully at the Prosper Ridge area in Humboldt County would have no adverse effect on coastal resources for the reasons identified in Negative Determination No. ND-0013-22. The Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations.

Please contact Alexis Barrera at alexis.barrera@coastal.ca.gov if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassidy Teufel".

CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
FAX (415) 904-5400
TDD (415) 597-5885



February 16, 2022

Jill Terp
Deputy Project Leader
San Diego National Wildlife Refuge Complex
US Fish and Wildlife Service
1080 Gunpowder Point Drive
Chula Vista, CA 91910

Re: Negative Determination No. ND-0014-22: Bolsa Avenue Observation Deck
Replacement Project, Seal Beach National Wildlife Refuge, Orange County

Dear Jill Terp:

We have received your letter dated February 2, 2022, in which you have determined that the above-referenced proposal to replace an aging observation deck at the Seal Beach National Wildlife Refuge in Orange County would have no adverse effect on coastal resources for the reasons identified in Negative Determination No. ND-0014-22. The Coastal Commission staff agrees that the proposed project will not adversely affect coastal zone resources. We therefore **concur** with your negative determination made pursuant to 15 CFR Section 930.35 of the NOAA implementing regulations.

Please contact Alexis Barrera at alexis.barrera@coastal.ca.gov if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cassidy Teufel".

CASSIDY TEUFEL
Federal Consistency Coordinator
(for)

JOHN AINSWORTH
Executive Director