

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Issue individual permits authorizing incidental take. The issuance of individual permits authorizing incidental take is a complicated, lengthy, and expensive process, and the Commission specifically finds that it is not feasible for the Department to issue incidental take permits on a project-by-project basis for the multitude of activities that will otherwise be prohibited during the Xantus's murrelet's candidacy period. The Department has testified that the species is not, in its opinion, at immediate risk of extinction. At the same time, these continuing regulations include conditions designed to protect Xantus's murrelet that apply to all covered activities. For these reasons, a continuation of the regulations is necessary to allow economic and recreational activities to continue within the area covered by the petition while ensuring appropriate interim protections for Xantus's murrelet while the Department conducts a 12-month review of the status of the candidate species subject to the petition.

(b) No Change Alternative:

If the Commission does not adopt regulations to allow for incidental take, either via regulation or on a project-by-project basis, then any individual engaged in otherwise legal activities would be prohibited from engaging in those activities that may result in the incidental take of Xantus's murrelet during its candidacy period.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Approximately 183 market squid vessel permittees and 39 light boat permittees, and on the order of two dozen commercial passenger fishing vessels (CPFVs) could be impacted by the regulations to exclude light and noise activities during night-time hours within 1 nautical mile of Santa Barbara and Anacapa islands during the Xantus's murrelet's breeding season (February 1 through July 15). Because both these sectors of the fishing industry can and do operate in and around the waters of other islands and the coastline, it is difficult to estimate the actual total cost of impacts. However, data from log books submitted by vessel operators provide us with some indication that the impacts would be minimal.

For the squid fishery, the impacts should be relatively small because the fishery in southern California generally operates in other areas during the late winter. From squid fishery log books for the period May 2000 to September 2002, less than 1 percent of catches was reported from both Anacapa and Santa Barbara islands during the two February to July 15 periods.

The impacts would be somewhat different between CPFV dive and CPFV finfish sectors of the industry but should also be small because the restricted area around these two smaller islands is a small part of the total area within 1 nautical mile around all eight Channel Islands. From CPFV log books for 2000 and 2001, only 29 dive trips and 18 finfish trips occurred at night at Anacapa Island during February through July. This is less than 3 percent and 1 percent, respectively, of the total dive trips and finfish trips at all eight Channel Islands during this same period. At Santa Barbara Island, only 17 dive trips and 157 finfish trips occurred at night during the same period. This is less than 2 percent and 3.5 percent,

respectively, of the total dive and finfish trips at all eight Channel Islands during February through July.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

The objective of these regulations is to allow a variety of activities to continue on an interim basis, subject to the measures in the regulations designed to protect Xantus's murrelet (*Synthliboramphus hypoleucus*) during the candidacy period. Continuation of the regulations will allow the Department to focus its efforts on evaluation of the status of the species. The Department's evaluation of the species during the candidacy period will result in a status report regarding the species, which will provide a basis for the Department's recommendation to the Commission regarding the species' appropriate long-term status under California Endangered Species Act (CESA).

The proposed regulations would authorize and provide for take of Xantus's murrelet during its candidacy under CESA as follows:

1. The incidental take of Xantus's murrelet resulting from night-time (dusk to dawn) vessel operation between July 16 and January 31 is authorized within the areas from the mean high tide line extending 1 nautical mile around the entire shoreline of Santa Barbara and Anacapa islands.
2. The incidental take of Xantus's murrelet resulting from night-time vessel operation is authorized at any time outside of 1 nautical mile around the entire shoreline of Santa Barbara and Anacapa islands.
3. The incidental take of Xantus's murrelet resulting from night-time vessel operation between February 1 and July 15 within the areas from mean high tide to 1 nautical mile around the entire shoreline of Santa Barbara and Anacapa islands is authorized only if the vessel is in compliance with each of the following restrictions:
 - (a) The vessel is not engaged in night fishing or night diving;
 - (b) External loud speakers on the vessel are not in use;
 - (c) The vessel is within a designated anchorage or safe harbor during the night, except when transiting through the areas specified in the regulations; and
 - (d) Lighting on the vessels is limited to navigational lighting necessary for safe operations.
4. The incidental take of Xantus's murrelet in the course of ongoing research and monitoring of this species by public agencies other than the Department and by private parties is authorized as long as the agency or private party provides a written progress report to the Department.

At the May 8, 2003 adoption hearing, the Commission took action to adopt the proposed regulations, which serve to confirm an existing emergency regulatory action taken by the Commission in February 2003.

Regulatory Language

Add Section 749.2 Incidental Take of Xantus's Murrelet (*Synthliboramphus hypoleucus*) During Candidacy Period:

Section 749.2. Incidental Take of Xantus's Murrelet (*Synthliboramphus hypoleucus*) During Candidacy Period

The commission finds that, based on current knowledge and protection, and management efforts outlined in this regulation, the level of take of Xantus's murrelet which is likely to occur during the period that this regulation is in effect will not cause jeopardy to the continued existence of the species.

(a) Take Authorization

Based upon the above findings, the commission authorizes the take of Xantus's murrelet during the candidacy period for each of the activities described below, subject to the terms and conditions specified for each activity.

(1) Night-time Disturbance (light and noise) near Breeding Colonies.

(A) Incidental take of Xantus's murrelet resulting from night-time (dusk to dawn) operation of a vessel is authorized all year outside the areas described in subsections (a)(1)(D) and (a)(1)(E).

(B) Incidental take of Xantus's murrelet resulting from night-time operation of a vessel from February 1 through July 15 within the areas described in subsections (a)(1)(D) and (a)(1)(E) is authorized only where such take occurs in compliance with each of the following restrictions:

1. the vessel is not engaged in night fishing or night diving;
2. external loud speakers on the vessel are not in use;
3. the vessel is within a designated anchorage or safe harbor from dusk to dawn, except when transiting through areas described in subsections (a)(1)(D) and (a)(1)(E); and
4. lighting on the vessel is limited to navigational lighting necessary for safe operations.

(C) Incidental take of Xantus's murrelet resulting from night-time operation of a vessel from July 16 through January 31 within the areas described in subsections (a)(1)(D) and (a)(1)(E) is authorized without the restrictions contained in subsection (a)(1)(B).

(D) Santa Barbara Island: from the mean high tide line extending 1 nm around the entire shoreline of Santa Barbara Island. Anchorages and safe harbors include Landing Cove (33° 28.9' N. lat., 119° 1.7' W. long.), and from Arch Point (33° 29.3' N. lat., 119° 1.6' W. long.) to the southernmost point of the island (33° 27.9' N. lat., 119° 2.1' W. long.).

(E) Anacapa Island: from the mean high tide line extending 1 nm around the entire shoreline of Anacapa Island. Anchorages and safe harbors include Landing Cove (34° 1' N. lat., 119° 21.6' W. long.) and Frenchy's Cove (34° 0.4' N. lat., 119° 24.4' W. long.).

(2) Ongoing Research and Monitoring.

(A) Public Agencies and Private Parties.

1. Take of Xantus's murrelet in the course of ongoing and currently permitted research and monitoring of this species by public agencies other than the department and by private parties is authorized provided that a written, detailed project progress report describing objectives, methods (gear, sampling schedules and locations), efforts to minimize adverse effects to the species, and estimated level of take of the species shall be provided to the department's Marine Regional Manager within 60 days of this regulation becoming effective.

2. Take of Xantus's murrelet incidental to the course of marine research by public agencies other than the department and by private parties, using artificial night-lighting on vessels is authorized subject to the restrictions in subsection (a)(1).

3. At the discretion of the department, research and monitoring activities not addressed by the above procedures may receive separate authorization for take of Xantus's murrelet by the department pursuant to Fish and Game Code Section 2081.

Department of Fish and Game Contact: Regional Manager, Marine Region: 4665 Lampson Avenue, Los Alamitos, California 90720, (562) 342-7100.

(3) Additions, Modifications or Revocation.

(A) Incidental take of Xantus's murrelet from activities not addressed in this section may be authorized during the candidacy period by the commission pursuant to Fish and Game Code Section 2084 or by the department pursuant to Fish and Game Code Section 2081, on a case-by-case basis.

(B)The commission may modify or repeal this regulation in whole or in part, pursuant to law, if it determines that any activity or project may cause jeopardy to the continued existence of Xantus's murrelet.

NOTE:

Authority: Sections 200, 202, 205, 240 and 2084, Fish and Game Code.

Reference: Sections 200, 202, 205, 240, 2080, 2084 and 2085, Fish and Game Code.