

San Fran transcript

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM
PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT
PUBLIC HEARING
SAN FRANCISCO

Monday, April 2, 2007

REPORTER: PATRICIA M. ABALOS, CSR 13128 Job 4927

San Fran transcript

PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

PUBLIC HEARING

SAN FRANCISCO

--o0o--

BE IT REMEMBERED THAT, on Monday, April 2, 2007, commencing at 1:15 p.m. thereof at BAY CONSERVATION AND DEVELOPMENT COMMISSION, 50 California Street, Suite 2600, San Francisco, California, before me, PATRICIA M. ABALOS, a Certified Shorthand Reporter, the following public hearing was held:

--o0o--

MS. HOWLETT: We thank you guys for coming to the Marine Mammal Health and Stranding Response Program Programmatic Environmental Impact Statement public hearing. We're going to give a formal presentation followed by a formal oral comment period. After the comment period ends and we stop taking notes for the public record, there will be an informal QA session where you can ask any of us questions.

I'm Sarah Howlett, and all you guys know Sara Wilkin. So the purpose of our meeting today is to present an overview of the information that is contained in the draft, PEIS, and to give you the opportunity to give us comments on the PEIS, and also to discuss the

2

next steps that NMFS will be taking in revising and finalizing the PEIS.

This is our first public hearing. We will have one tomorrow in Seattle, Friday in Silver Spring,

San Fran transcript

5 and next week in Boston, and in St. Petersburg.
6 Everybody, I think, has already signed in. If you
7 wanted to make an oral comment, we hope that you also
8 noted that you wanted to. We will also be accepting
9 written comments today, and transcripts of today's
10 meeting are being captured by our court reporter.

11 I'm going to give a little bit of background
12 on the National Environmental Policy Act, otherwise
13 known as NEPA. If you were here last year, you probably
14 heard this before. NEPA requires federal agencies to
15 analyze the potential environmental impacts of their
16 actions or a major federal action.

17 This just means they need to consider the
18 environmental consequences during their decision making
19 to reduce, prevent, or eliminate environmental damage.
20 NEPA also requires federal agencies to provide
21 opportunities for public involvement. This is obviously
22 one of them. And the scoping process which was held
23 last year in January here also was an opportunity for
24 public comment.

25 It's important to note that NEPA does not

3

1 dictate the decision to be made any NMFS, but it helps
2 to form the decision-making process.

3 So why are we preparing a PEIS? It's NOAA
4 policy to prepare the PEIS for a major federal action,
5 and that may be one that is the subject of significant
6 public controversy, it may have uncertain environmental
7 impacts, and may establish a precedent and principal

San Fran transcript

8 about future proposals, it may result in
9 cumulatively-significant impacts, and it may have
10 adverse effects on threatened and endangered species or
11 their habitats.

12 Just to clarify what a PEIS is versus an EIS,
13 an EIS focuses mainly on one action or projects, while a
14 PEIS is a more comprehensive document that considers the
15 impacts of a number of related actions or projects.

16 It analyzes a broad scope of actions and the
17 general environmental consequences of each action. So
18 if you look at the document, you know that we aren't
19 very specific on impacts to an individual animal or
20 individual place in the U.S.

21 This is the EIS process flow chart. As I
22 said, the Notice of Intent was published December 28th,
23 2005, and that started our scoping period where we
24 collected comments from the public. We took these
25 comments into account when we started our environmental

4

1 analysis and drafting of the PEIS.

2 The draft PEIS was published in the federal
3 register on March 16th, 2007. So now we are here, the
4 public comment period, which lasts for 45 days. And
5 that will end April 30th.

6 Then after that, the final PEIS, another
7 public review for 30 days and the NMFS will issue its
8 Record of Decision, also known as a ROD.

9 Just to kind of go on that, the next step, as
10 I said, April 30th, is when the public comments on the

San Fran transcript

11 draft document are due. Once NMFS gets all these
12 comments, we'll review them and merge the comments as we
13 see necessary as they correspond to the document. We
14 will respond to everybody who has commented to let you
15 know what we have done with your comments, and then we
16 will finalize the PEIS.

17 We will issue the final PEIS for a 30-day
18 public review leaning more towards June 2007. And it's
19 important that NMFS does not have to respond to comments
20 during this period. If people want to comment, they
21 can, but we don't have to respond. Then we'll publish
22 the Record of Decision June 2007.

23 The Record of Decision is just a document
24 stating NMFS' decision on the alternatives that we've
25 chosen, why we have chosen those and not other

5

1 alternatives, and the time line for other
2 implementation.

3 If you have looked at the document, you
4 pretty much should probably already know what it looks
5 like. The Section One of EIS is the purpose and need
6 for the proposed action and also a description of the
7 proposed actions.

8 Section Two is a lengthy list of alternatives
9 that we have developed for stranding response, carcass
10 disposal, rehabilitation, release, disentangling, and
11 our biomonitoring and research activities.

12 Section Three is the affected environment.
13 And these are the areas that could be impacted by our

San Fran transcript

14 actions which include the biological resources as well
15 as water and sediment quality, cultural resources,
16 public health and safety, and socioeconomics.

17 Section Four, the environmental consequences
18 or the impacts our actions may have on those areas
19 listed in the affected environment.

20 Section Five provides mitigation. So when
21 you're looking at Section Four, we lay out all the
22 impacts, not considering things that we might be doing
23 to minimize those impacts. Those are the mitigation
24 measures lining Section Five. Those will be the things
25 that NMFS and the network of people involved in the

6

1 MMHSRP do to minimize the impacts listed in Section
2 Four.

3 Section Six are the cumulative impacts, so
4 what our actions plus other actions going on along with
5 U.S. coastline will have on the environment.

6 I will turn this over to Sarah who will give
7 some background on the proposed actions and the
8 preferred alternatives.

9 MS. WILKIN: All right. Our proposed action
10 or the federal activity that we're conducting is kind of
11 an impetus for this document -- are there's many
12 different aspects of it. But the big one is the
13 issuance of the policies and best practices for mammal
14 stranding response rehabilitation and release.

15 These are presented as an appendix to the
16 document and include the new minimum evaluation criteria

San Fran transcript

17 for stranding agreements, the stranding agreement
18 template, rehabilitation facility standards, the release
19 criteria, the disentanglement guidelines. Currently,
20 those are in draft or interim form. But with the
21 completion of this EIS, we plan to issue them as final.

22 The second is the issuance of the MMHSRP
23 Endangered Species Act, Marine Mammal Protection Act
24 Permit. Currently, the program holds a permit that
25 allows to it conduct activities on endangered species

7

1 which are not encompassed under MMPA. It's an umbrella
2 permit for the network, again, for those ESA species.
3 And it also includes many portions that are devoted to
4 research and biomonitoring.

5 The third is the renewal or an issuance of
6 stranding agreements on a case-by-case basis, and then
7 finally other day-to-day operations would continue. And
8 these are all federal activities. These are from the
9 federal perspective, what we're doing where activities
10 are concerned. But that includes release,
11 determinations, and guidance and instructions for
12 response and rehabilitation.

13 Now I'm going to go over just the preferred
14 alternatives. As Sarah said, in the alternative section
15 of the document we lay out a whole sweep of different
16 ideas that we kind of consider. And then we have chosen
17 one in each case. It's kind of the preferred or what we
18 really want to do.

19 In the case of stranding agreements and
Page 7

San Fran transcript

20 response, the current alternative is A4. It involves a
21 couple of things. First of all, the stranding agreement
22 template will be used nationwide for the next time that
23 your stranding agreement is renewed or issued. This is
24 actually already beginning to be implemented in many of
25 the regions and will be nationwide once this is

8

1 published. So the next time your stranding agreement is
2 renewed, you'll see it in possibly a slightly different
3 format than you're used to, but it should be relatively
4 the same.

5 The final stranding agreement evaluation
6 criteria, again, would be implemented for the next time
7 the stranding agreement is renewed or issued. So this
8 document contains a list of evaluation criteria that the
9 next region will use to assess the qualifications for
10 conducting the activities that they're going to be
11 authorized to do, so response, rehabilitation, et
12 cetera.

13 The current activities of the stranding
14 network would continue with the ability to add new or
15 adaptive activities if necessary. So again, your
16 day-to-day operations will probably go along much as
17 they do right now. But if something comes up --
18 developments in science, developments in practices, that
19 we want to add new activities -- we can do so. If they
20 are not covered under the impacts that are currently
21 being assessed, then we would do a supplemental document
22 to this programmatic document.

San Fran transcript

23 Carcass disposal, the preferred alternative is
24 B3. This involves a recommendation to transport
25 chemically-euthanized carcasses off site for disposal.

9

1 Our preferred methods of disposal are incineration,
2 landfill, or other methods such as composting once the
3 composting has been assessed to determine what the
4 impacts of that are.

5 Again, this is a recommendation, so we
6 understand that it may not be logistically feasible to
7 transport a chemically-euthanized carcass especially
8 when they're a large animal. But when at all possible,
9 it should be done. Animals that die naturally or are
10 euthanized by other means may be disposed of by whatever
11 means are feasible and allowed in the geographic area
12 where you are.

13 Under rehabilitation activities, the preferred
14 alternative is C3. Current rehabilitation activities
15 would continue, so the facilities that are currently
16 part of the network would continue to be part of the
17 network. It also gives us the ability to designate new
18 rehabilitation facilities and modify rehab activities as
19 necessary, so in geographic areas where they currently
20 don't exist.

21 Secondly, the final rehabilitation facility
22 standards would be implemented and then enforced to what
23 we have listed as the minimum standard via an inspection
24 program. Our plan right now is phase this in over three
25 years. That's kind of discussed in the document. So it

1 would be final and actually would take effect in about
2 three years from the issuance of a ROD. This is
3 something you can comment on.

4 FEMALE SPEAKER: May I ask a question? So
5 once the whole ROD thing goes through, is this then a
6 legal document or just recommended -- I'm confused about
7 what it actually does.

8 MS. WILKIN: The EIS is kind of the objective
9 analysis of here's your activities and here's their
10 impacts. The ROD is us saying, all right, we've looked
11 at the EIS and it's told us all these, so here's our
12 decision, here's what we're going to do, here's how
13 we're going to implement it, here's how we're going to
14 take into account all the things that the objective EIS
15 is kind of recommending that we do.

16 Under release of rehabilitated animals in D3,
17 again, current release activities would continue with
18 the ability to modify release activities as necessary.
19 But also the release criteria would be implemented
20 effective immediately prior. So prior to making a
21 release determination, the regional coordinator would be
22 making their decision-making process using the criteria.

23 For disentanglement, the preferred alternative
24 is E3. With the current activities, the disentanglement
25 network would continue and the ability to add new

San Fran transcript

1 participants and modify activities and technologies as
2 necessary. Again, if those modifications would fall
3 outside the scope of the impacts that we've looked at,
4 then we would have to reassess them. But for the most
5 part, a lot of technology changes don't necessarily fall
6 outside of the scope.

7 Disentanglement of small cetaceans and
8 pinnipeds would continue under new stranding agreements
9 as is taking place now. We would have the ESA MMPA
10 permit to the program -- would authorize current and
11 future disentanglement activities for endangered and
12 threatened species which otherwise aren't authorized.

13 Again, under this alternative the East Coast
14 network would continue their current activities. The
15 West Coast network would be modified slightly to
16 coordinate structure and training effective immediately.
17 This is already ongoing with a lot of the trainings that
18 have been occurring, so a continuation of that. And
19 then the Disentanglement Guidelines and training
20 prerequisites document would be implemented nationwide
21 under some eased-in approach.

22 Finally, for the biomonitoring and research
23 aspects, preferred alternative is F3 where the Protected
24 Resources Division 1 would issue our program a new AES
25 MMPA permit to include current and future biomonitoring

12

1 and research activities.

2 Just a note that if the permit cannot be

San Fran transcript

3 issued prior to the expiration of the current permit,
4 the current permit may be amended or extended to cover
5 the date back until a new permit can be issued. That's
6 the preferred alternatives that we've selected.

7 I just wanted to briefly talk about mitigation
8 which is Section Five of the document. Mitigation is
9 defined as -- the purpose is to avoid, minimize, or
10 eliminate the negative impacts from proposed action. So
11 wherever we have identified a significant impact from
12 the alternative, then we've also proposed a mitigation
13 measure that would help avoid, minimize, or eliminate
14 it.

15 These are some of the examples in sensitive or
16 protected habitats. The stranding network members would
17 coordinate with responsible authorities. Stranding
18 response activities, qualified personnel would be used
19 for capture and restraint.

20 The uses of standards and protocols play into
21 mitigation in a big way. Basically, you all should take
22 a pretty significant look at the mitigation measures
23 because this is kind of what the agency is considering
24 committing to, both on our behalf and also for the
25 stranding network and also for the disentanglement

13

1 networks.

2 MS. HOWLETT: So that's our presentation. It
3 is time for oral comments.

4 MR. WILSON: Could we take a five-minute
5 break?

San Fran transcript

6

MS. HOWLETT: Sure.

7

(Recess taken.)

8

MS. HOWLETT: Our court reporter will be

9

recording your comments. Also, your written comments

10

are also welcome today. You can hand them in today. We

11

also have comment sheets up front that you can write on,

12

or you can submit them to us by mail or e-mail. I

13

believe we have on the handouts -- we also have our

14

information for you to send them to. We just ask for

15

written and verbal comments, that you bring very

16

specific concerns regarding the content of the draft

17

document. And please suggest civic changes to

18

alternative environmental consequences that NMFS should

19

consider.

20

MR. FOLKENS: You want a written response in

21

addition to the oral?

22

MS. HOWLETT: No. If you just want to give

23

oral, that's fine. If you think of something that you

24

didn't give us, you can feel free to write it down.

25

Just to let you know that additional information is also

14

1

available via public libraries, and it's available on

2

our NMFS web page. If you comment today, you will get a

3

copy of the final document. But if you're not

4

commenting and you want a copy, please feel free to

5

check up on our sign-in sheet if you would like one. We

6

can begin.

7

MR. FOLKENS: This is Peter Folkens from the

8

Alaska Whale Foundation. I have four specific items to

San Fran transcript

9 raise.

10 First one pertains to the recognition of
11 stranding agreements across regions. Due to an ongoing
12 research affiliation at University of California, Davis,
13 a number of Alaska Whale Foundation personnel went over
14 into the San Francisco Bay Area from October to May.

15 We keep two of our six boats here as well.
16 They are assigned at the moment to Contra Costa County
17 Search and Rescue team. In southeast Alaska, we now see
18 more whale entanglements in one season than the
19 southeast region has experienced in a decade.

20 The Alaska Whale Foundation boat,
21 disentanglement equipment, and expertise can be put to
22 good use in Northern California. However, in a recent
23 Alaska stranding network meeting in Anchorage, it was
24 pointed out that stranding agreements are not recognized
25 across regions.

15

1 Under the notion of best practices, we
2 recommend that the National Marine Mammal Health and
3 Stranding network implements a policy and procedure to
4 either recognize stranding agreements across regions or
5 issue additional stranding agreements to singular
6 organizations that typically cross multiple
7 jurisdictions.

8 Item 2. Since the 9/11 and Katrina disasters,
9 the federal government has implemented policies and
10 procedures for the standardization of roles and training
11 levels of responders. This has taken the form of the

San Fran transcript

12 ICS 100 and NMFS 200 response management protocols for
13 all types of official responses. I understand the
14 National Marine Fisheries Service employees are trained
15 to these standards.

16 At a recent Alaska Marine Mammal
17 Disentanglement Network meeting in Anchorage, the
18 question was raised about ICS training. It turns out
19 that everyone in attendance except one has had ICS 100
20 training. It was also mentioned by Robert Mahoney from
21 the NMFS office in Anchorage that the disentanglement
22 network follows a de facto NMFS kind of structure. It's
23 my suggestion that an ICS 100 structure be officially
24 part of the entanglement responses across regions.

25 Item 3. In a related issue, responder typing

16

1 at the federal and state levels is a 1 to 4 hierarchy
2 with 1 being the highest certification. However, the
3 National Marine Fisheries Service disentanglement
4 response training typing is backwards with 1 being the
5 lowest level of training. Since such responses often
6 include the U.S. Coast Guard and other official
7 government entities that follow the other ICS and NMFS
8 typing protocols, I recommend that National Marine
9 Fisheries Service flips its type numbering so that 1 is
10 at the highest level with perhaps a 1A designation for
11 specific right whale responders.

12 Item 4. For many years, the standard training
13 response data form was one from the Smithsonian
14 Institution designed by comparative anatomists. As the

San Fran transcript

15 Marine Mammal Protection Act and National Fisheries
16 Office of Protective Resources began to play a bigger
17 role in such events, the response data forms became
18 heavily focused on soft tissue sampling, probably
19 largely due to expertise of the veterinarians that were
20 taking major positions at the federal level.

21 Unfortunately, this was at a near-complete
22 disregard for anatomical and morphological data. Here I
23 requested the National Marine Fisheries Service
24 incorporate more anatomical data on its Level A data
25 form. Towards that end, I have offered a couple of

17

1 solutions that meet the needs of both the soft tissue
2 collectors and the comparative anatomists. I have
3 copies here that I've given to a few people and I can
4 give for the official record.

5 To give you an example of a real world
6 situation in which a better data form would have saved
7 literally hundreds of thousands of dollars for the
8 government, I was involved as an expert witness in a
9 ship strike event in which if the original stranding
10 data were taken better and with a more forensic line and
11 morphological and anatomical data, it is unlikely that
12 there would have been litigation over that event, saving
13 literally hundreds of thousands of dollars both for the
14 government and the private sector.

15 So I feel very strongly that the Level A data
16 form needs to include more forensic, morphological
17 information. Are there any questions?

San Fran transcript

18 MS. WILKIN: Thank you for your comment.

19 MR. FOLKENS: You'll notice in the Level A
20 data form, the backside says "additional comments." And
21 that's something that can be done quite efficiently by
22 saying, use a separate page for additional comments.
23 And then we can take the morphological data that the
24 Smithsonian likes and incorporate that on the back side
25 Level A data form.

18

1 To further that notion just a little bit, back
2 almost two decades ago, Steve Leatherwood and myself put
3 together largely what you see in the stranding data
4 forms for the National Marine Sanctuaries Program,
5 specifically for the Channel Islands National Marine
6 Sanctuary. In the back of this, we had several examples
7 of marine mammal stranding forms that would approach the
8 historical and traditional Level A data information
9 that's important to morphologists -- nowadays with the
10 increase in ship strikes, people who do mechanics of
11 injury reconstruction and so on. I think it would be
12 very, very useful on the national level to have a better
13 Level A form that could help us with ship strike
14 litigation.

15 FEMALE SPEAKER: What do they use the data
16 for? I've always been told that these measurements,
17 which we always take anyway, would be only used for
18 species identification.

19 MR. FOLKENS: I don't know if you know my
20 history, but I use it lots of different ways. But

San Fran transcript

21 you'll notice that the illustrations that are here -- an
22 individual can indicate evidence of potential injury
23 points, places of blunt force trauma. In the example of
24 the ship strike that I was involved in as an expert
25 witness, they did not document the impact plan.

19

1 Consequently, the veterinarian worked on it,
2 made a decision based on what they saw internally rather
3 than what they saw externally, and got the point of
4 contact on exactly the wrong side of the whale. It was
5 a mechanics-of-injury thing. It was a lower occipital
6 violation that was caused by leveraging of the head as
7 opposed to the shaking of the head.

8 FEMALE SPEAKER: But you think the
9 measurements would have detailed that? Or you need to
10 have a wound sheet or something?

11 MR. FOLKENS: You see the picture?

12 FEMALE SPEAKER: Yeah.

13 MR. FOLKENS: Indicating where that happened
14 and getting precise measurements would make it -- in
15 other words, if you drew a picture on that form and you
16 said we think there's a possible contact injury here,
17 the measurement could be done and it would facilitate a
18 forensic osteologist like myself to indicate the
19 mechanics of injury to demonstrate quite easily how the
20 internal damage could have been caused by the type of
21 contact injury. That's the kind of point -- I'll pass
22 this around.

23 MR. WILSON: My name is Bob Wilson, policy

San Fran transcript
24 liaison for the Marine Mammal Center in Sausalito,
25 California. First of all, I'd like to commend the

20

1 agency on all your time and hard work that you've put
2 into this effort. We realize how much effort this does
3 take.

4 Now, that stranding programs are important I
5 think is demonstrated by the vast public support that
6 the Marine Mammal Center here in the Bay Area has
7 received as evidenced by our current construction of our
8 25 million-dollar facility.

9 We support the four major proposed actions in
10 the effort. The first is the issuance of a new EIS and
11 MMPA permit to the program as a whole, continuance of
12 current operations, renewal of stranding agreements,
13 continuation of Prescott Grant Program, and the issuance
14 of the policies and the best practices manual.

15 As to stranding activities, we support the
16 preferred alternative A4, which is issuance of stranding
17 agreement criteria, use of the standard template for
18 stranding agreements. However, we read into that
19 alternative that there will be flexibility in the
20 regions in negotiating stranding agreements to take into
21 account local issues so that they meet the general
22 purposes of the MMPA.

23 As to carcass disposal, we support alternative
24 B3, the off-site disposal. We did not build a graveyard
25 in our new facility. As to rehabilitation activities,

21

San Fran transcript

1 we support preferred alternative C3 and the
2 implementation of those final rehabilitation facility
3 standards. Our new facility was based on the current
4 recommended standards, so we hope there are not major
5 changes in those.

6 As to release alternatives, we support
7 preferred alternative D3 and issuance of those final
8 release criteria. We've worked in the past on the
9 development of those standards. There have been a
10 number of meetings and issuance of publication. We're
11 in conformity with those and we support those.

12 As to the disentanglement network, we support
13 the preferred alternative E3, and as to biomonitoring
14 and research activities, we support the preferred
15 alternative F3. Thank you for the opportunity for
16 comments.

17 MS. WILKIN: If that's all for formal
18 comments, then we'll go ahead and end.

19 MR. FOLKENS: If I could add another comment.
20 Once again, raising an issue of the use of divers in
21 entanglement responses. So far, no official stranding
22 authorization holder has ever used a diver in the water
23 in a disentanglement action.

24 However, there's been a number of situations
25 in which general public divers have gotten in the water

22

1 and have actually effected a successful disentanglement.

San Fran transcript

2 We do not necessarily encourage that sort of thing,
3 certainly in the light of the individual -- and I think
4 it was someone in Australia who was killed trying to do
5 that.

6 However, the information coming from
7 disentanglement in which divers were involved in showing
8 that there is a level of efficiency that can be
9 accomplished by using a properly-trained diver. The
10 Alaska Whale Foundation, we have two certified rescue
11 divers and a rescue diver instructor within our ranks.
12 We would never use them in a disentanglement because it
13 would certainly "FUBAR" our letter of agreement.

14 However, we would like the National Marine
15 Mammal Stranding Act, not Act, but the federal people
16 involved in those sorts of discussions to consider the
17 possibility of establishing proper protocols and
18 training procedures for rescue divers to effect a
19 disentanglement that could very much be species
20 specific.

21 We already know that right whales are much or
22 aggressive than gray whales or the humpback whales on
23 the West Coast, and I think we could see a larger number
24 of successful disentanglements at a reduced risk to
25 responders by implementing the possibility under very

23

1 narrow, specific circumstances for rescue divers.

2 MS. WILKIN: All right. Thank you for your
3 comments.

4 (Whereupon, the public hearing was adjourned
Page 21

San Fran transcript
at 1:50 p.m.)

--o0o--

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25