

To Steller Sea Lion, Northern Fur Seal Researchers and Colleagues

This message is to provide to you with an update of where we are on completing an Environmental Impact Statement (EIS) on the effects of research activities on Steller sea lions and northern fur seals in anticipation of issuing new research permits in FY07, and to begin addressing questions you might have regarding what you have to do to obtain a new permit to conduct research this season and when that research might begin. I have broken this down into a brief background followed by the most frequently asked questions that we have received since last spring when research was suspended.

Background: In May 2005, the National Marine Fisheries Service (NMFS) issued six scientific research permits authorizing research on Steller sea lions. The permits were issued under both the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), and authorized a wide range of research activities. Prior to issuing these permits, NMFS prepared an environmental assessment (EA) under the National Environmental Policy Act (NEPA) and concluded that no significant harm to the environment would result from the activities to be authorized by the permits. On that basis NMFS determined that an EIS was not required under NEPA. In July 2005, the Humane Society of the United States (HSUS) challenged the validity of the permits, alleging among other things that by failing to prepare an EIS before issuing the permits, NMFS had violated NEPA.

On May 26, 2006, the District Court in Washington D.C. ruled that NMFS should have prepared an EIS under NEPA before issuing the permits in 2005. The judge held that the analysis contained in the EA did not support the finding of no significant harm to the environment. The judge vacated the six permits issued under the EA, and remanded the matter to the agency for completion of an EIS.

Q1: If the permits were vacated how did NMFS authorize last summer's research?

A: The court vacated the permits, and then, after several weeks of negotiation between NMFS, Department of Justice, and HSUS, the Court "re-validated" the permits in a June 30th order, but **ONLY** for the limited purpose of conducting activities specifically delineated in the settlement agreement. These activities were spelled out in the June 30th order and included 'hands-off' activities such as aerial and shipboard surveys, and monitoring from a distance. In other words, only certain activities under the permits were allowed. Any activities not spelled out in the order were (and remain) invalidated by the court.

Q2: Can the activities that were allowed last summer go forward again this summer (2007) without further negotiation?

A: The June 2006 Court order does not limit the 're-validated' activities to 2006, and in fact, specifically mentions that some of the activities will occur in 2007. For example, for Permit No. 782-1768 (NMML), the order states that "These surveys (from boats) will occur . . . August 1-31, 2007" and "This survey (from planes) will occur . . . March 2007." Other such 2007 activities are mentioned throughout. In other cases, no dates are specified, but the activity is of an ongoing

nature (e.g., monitoring, operation of remote cameras). Therefore, activities allowed in 2006 may continue into 2007.

Q3: Do researchers have to resubmit their application "for everything or just the parts that were vacated?"

A: It depends. Following the logic explained in the response to Q2, researchers do not have to resubmit applications to continue the activities allowed in 2006. Therefore, if your research is limited to what you did in 2006, and you are content with that level of activity, you do not have to apply for a new permit.

However, for those of you conducting research on Steller sea lions under permits affected by the May 2006 Court ruling who wish to "reinstate" the activities vacated by the Court, or your permit was not affected by the Court order but you want to make changes or additions to your permit, you need to submit an application for those activities. If you fall into one of these categories and need to resubmit an application for any part of your research, or if your current permit was not affected by the Court ruling but will expire in the next 12-18 months, we are recommending that each researcher resubmit their entire application in 2007 for several very good administrative reasons that affect both of us.

First, if you do not request a new permit for the research activities the court let go forward in 2006, these activities will likely expire in the next year or two (this varies with each permit). The activities that were vacated, and for which you need reapply, would be permitted in 2007 at the earliest, and set to expire in five years. Therefore you would end up working under two research permits with two different expiration dates depending upon the activity. This would double your permitting workload and ours, a trend we are clearly trying to reverse. Second, NMFS cannot issue permits for any research activities until NMFS completes the Court mandated EIS under NEPA. All of the research activities being conducted 2007-2012, vacated or not, need be evaluated in the EIS. Submitting a complete application for all research activities that you want to conduct in the next five years will ensure that they are covered in this NEPA document. Therefore if your research activities were being conducted under one of the six permits that were vacated by the May 2005 Court Order, we are asking you to resubmit your entire application.

Q4: What will be the process for submitting a Permit Application for FY07?

A: The primary purpose of this email message is to advise you to begin preparing your application for a permit to conduct research on these species now, and submit your application by December 1, 2006. The timing of this application is extremely important for several reasons. We want to conduct the required public comment period on the research applications during the same time period that we conduct the public comment period on the Draft EIS. Right now we are hoping to initiate the public comment period on the DEIS early to mid January. By receiving your application by December 1, it will allow you (the applicant) and Protected Resources one month to ensure that all applications are complete and ready for public review. We will then conduct the two comment periods together. This will help us ensure that all research activities

that are being proposed are addressed in the DEIS. Applications received after December 1, and applications that are incomplete, will result in delays in issuance of permits.

Q5: What is the timeline for the EIS process and when can we expect to get in the field this year?

A: First we are working with our contractor to complete the DEIS, including the analysis of effects for each alternative (including a preferred alternative) as quickly as possible without compromising the review. The principal complaint by the Court in 2006 was the inadequate analytical review under NEPA. If we can keep on current schedule, we have a target date of mid-June to have a signed Record of Decision (ROD) (this generally occurs 30 days after a Final EIS has been completed). The FEIS and ROD will then be provided to the Court. Barring another challenge, work can likely begin shortly after that date. However, we cannot guarantee a permit or an approval to get in the field by a specific date at this time.

General Instructions for Submitting and Expediting the Permit Application: Application instructions are included here and can also be downloaded from our website http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#enhancement. Please note that these instructions have changed since you last applied for a Steller sea lion or northern fur seal permit. To avoid delays in processing your application, please follow these new instructions carefully and provide complete responses to all questions.

One of the most common errors (for several reasons) in submitting an application is providing inadequate or insufficient information about the proposed “takes” for the research activities. “Takes” for each research activity need to be identified not only by species but by stock, specific geographic location, time of year, sex, and age class. For Steller sea lions, there are two Distinct Population Segments (DPS) and you must specify “takes” by DPS, rather than requesting them “range-wide” or “Alaska-wide.”

Specific information about when, where, and what group of animals the research would affect is critical to NMFS’ environmental analyses under NEPA, and, for Steller sea lions, under the ESA. Remember your permit application will be reviewed not only for compliance with MMPA issuance criteria, but NMFS decision to issue your permit will be subject to legal review under NEPA and the ESA as well. Note that we cannot process applications requesting takes of Steller sea lions only as “range-wide” or “Alaska-wide.”

Please, to the best of your knowledge, provide complete and detailed responses to all questions in the application instructions. Incomplete information will result in delays in processing your application. Any delays in completing the permit application by December 1 will likely compromise your ability to get in the field this season.

If you have questions about submitting your application or about the EIS, please contact Tammy Adams at 301-713-2289 or by email at Tammy.Adams@noaa.gov.