

RECORD OF DECISION

FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR THE MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

National Marine Fisheries Service
Office of Protected Resources

INTRODUCTION

The National Marine Fisheries Service (NMFS) has prepared a Final Programmatic Environmental Impact Statement (FPEIS) for the Marine Mammal Health and Stranding Response Program (MMHSRP). The MMHSRP consists of six integrated components. The FPEIS analyzes alternatives and the impacts of each component separately. This Record of Decision (ROD) documents NMFS' decision to implement the preferred alternatives in each of the six program areas.

The FPEIS provides decision-makers and the public with an evaluation of the environmental, social, and economic impacts of the proposed action and alternatives. The FPEIS and this ROD were prepared pursuant to the National Environmental Policy Act (NEPA, 42 USC § 4321 *et seq.*), the Council on Environmental Quality (CEQ)'s regulations implementing NEPA (40 CFR Parts 1500-1508), and the National Oceanic and Atmospheric Administration (NOAA) environmental review procedures (NAO 216-6). This ROD is a concise statement of the environmental impact analysis completed; the alternatives considered; decisions made and the basis for those decisions; and the mitigating measures developed to avoid or minimize potential impacts to the environment.

BACKGROUND

NMFS has the authority, delegated from the Secretary of Commerce, to take stranded marine mammals under Section 109(h) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1379) and to establish and manage the Marine Mammal Health and Stranding Response Program (MMHSRP) under Title IV of the MMPA (16 U.S.C. 1421 *et seq.*). The purposes of the proposed actions are to respond to marine mammals in distress, including those stranded, entangled, and out of habitat, and to answer research and management questions about marine mammal health.

NMFS published a Notice of Intent (NOI) to prepare the PEIS in the *Federal Register* on December 28, 2005 (70 FR 76777-76780), opening a 60-day public scoping and comment period that ended on February 28, 2006. A Notice of Availability (NOA) of the draft PEIS was published on March 16, 2007 (72 FR 12610). The comment period was subsequently extended by 30 days to May 30, 2007 (72 FR 21005). NMFS held five public hearings on the draft PEIS in April 2007 to solicit and receive comments.

The NOA for the FPEIS was published on March 6, 2009 (74 FR 9817) and comments were accepted during the 30-day minimum wait period mandated by CEQ regulations. The 30-day wait period ended on April 6, 2009. NMFS reviewed and considered all comments in preparation for this ROD.

NMFS issued a Biological Opinion on February 26, 2009. The Biological Opinion concluded that the MMHSRP is not likely to jeopardize the continued existence of Guadalupe fur seal (*Arctocephalus townsendi*), Steller sea lion (*Eumetopias jubatus*) (western and eastern populations), Hawaiian monk seal (*Monachus schauinslandi*), blue whale (*Balaenoptera musculus*), bowhead whale (*Balaena mysticetus*), fin whale (*Balaenoptera physalus*), humpback whale (*Megaptera novaeangliae*), killer whale (*Orca Orcinus*) (southern resident population), North Atlantic right whale (*Eubalaena glacialis*), North Pacific right whale (*Eubalaena japonica*), sei whale (*Balaenoptera borealis*), and sperm whale (*Physeter macrocephalus*). The proposed actions are not expected to incidentally take threatened or endangered species.

NMFS determined that the proposed activities may affect, but are not likely to adversely affect, threatened and endangered species under U.S. Fish and Wildlife Service (FWS) jurisdiction. Accordingly, NMFS notified the FWS. FWS concurred with the NMFS determination. NMFS Regional Stranding Coordinators will consult with regional FWS offices on the potential effects of activities on ESA-listed species under FWS jurisdiction. Consultation will occur within six months of the issuance of this ROD

ALTERNATIVES CONSIDERED

The FPEIS analyzed and considered several alternatives. The alternatives were grouped into the following six topics: Stranding Agreements (SAs) and response; carcass disposal; rehabilitation activities; release activities; disentanglement; and biomonitoring and research activities. A No Action Alternative, Status Quo Alternative, and Preferred Alternative were designated under each issue.

A. SAs and Response Activities Alternatives

- A1- No Action Alternative- SAs are not issued or renewed. No stranding response activities.
- A2- Status Quo Alternative- Current SAs are renewed and current stranding response activities continue. Final SA criteria are not issued.
- A3- SAs are issued to any applicants after review. Final SA criteria are not issued. SAs include current and future stranding response activities.
- A4- Preferred Alternative- Final SA criteria are implemented. SAs would be issued on a case-by-case basis. SAs include current and future stranding response activities.
- A5- Final SA criteria are implemented. SAs would be issued on a case-by-case basis. Stranding response to threatened, endangered, and rare animals is **required**; response to other animals is optional.

B. Carcass Disposal Alternatives

- B1- No Action Alternative- No carcass disposal.
- B2- Status Quo Alternative- Current methods of carcass disposal continue.
- B3- Preferred Alternative- Recommendation to transport chemically euthanized animal carcasses off-site.

C. Rehabilitation Alternatives

- C1- No Action Alternative- No rehabilitation of stranded animals.
- C2- Status Quo Alternative- Current rehabilitation activities continue.
- C3- Preferred Alternative- NMFS issues new SAs and response and rehabilitation activities continue. Final Rehabilitation Facility Standards are implemented.
- C4- New SAs are issued and response and rehabilitation activities continue. Rehabilitation of threatened, endangered, and rare animals is **required**; response to other animals is optional. Final Rehabilitation Facility Standards are implemented.

D. Release Alternatives

- D1- No Action Alternative- No animals to be released.
- D2- Status Quo Alternative- Current release activities continue.
- D3- Preferred Alternative- New SAs are issued and response, rehabilitation, and release activities continue. Final release criteria are implemented.

E. Disentanglement Alternatives

- E1- No Action Alternative- No disentanglement network.
- E2- Status Quo Alternative- Disentanglement network continues current activities, no modifications or new members added.
- E3- Preferred Alternative- Disentanglement network continues current activities on East Coast with modifications to West Coast network. The Disentanglement Guidelines and training prerequisites would be implemented.

F. Biomonitoring and Research Alternatives

- F1- No Action Alternative- Biomonitoring and research activities would not occur.
- F2- Status Quo Alternative- Continuation of current biomonitoring and research activities.
- F3- Preferred Alternative- New ESA/MMPA permit issued to include current and future biomonitoring and research activities.

Environmentally Preferable Alternative(s)

NEPA implementing regulations require an agency to identify an environmentally preferable alternative(s) in the ROD. The environmentally preferable alternative is the alternative which causes the least damage to the biological and physical environment, and which best protects, preserves, and enhances historical, cultural, and natural resources. The alternative is based only on the physical and biological impacts of the proposed action, and not the social or economic

impacts of the action. The FPEIS analysis in Chapter 4 demonstrates that Alternatives A4, B3, C3, D3, E3, and F1 are the environmentally preferable alternatives for these program components.

Alternative A4 (SAs and response) authorizes current and future stranding response activities. This alternative best protects marine mammals, including ESA-listed species, and allow the collection of valuable marine mammal health information.

Alternative B3 (carcass disposal) recommends the removal of chemically euthanized animal carcasses off-site for disposal by incineration, landfill, or other methods. Removal of these carcasses would remove the risk of contamination to the surrounding environment, including scavengers, birds, fish, and other invertebrates.

Alternative C3 (rehabilitation activities) provides the best care for rehabilitating marine mammals with the implementation of the Rehabilitation Facility Standards. Rehabilitation would be available for all marine mammals, not just threatened, endangered, or rare animals. This alternative would not adversely affect the surrounding environment due to the mitigation measures incorporated into the Standards.

Alternative D3 (release activities) authorizes the release of rehabilitated animals back to the wild. This alternative has the most beneficial impacts on both released and wild marine mammals, because the Release Criteria would be implemented and adaptive changes would be permitted. With the mitigation measures, the impacts to the environment would be minimal.

Alternative E3 (disentanglement activities) authorizes current and future disentanglement activities to occur and modifications would be permitted. Only qualified and experienced individuals engage in disentanglement activities. This alternative provides major long-term beneficial effects on marine mammals.

Alternative F1 (biomonitoring and research activities) would affect the environment and biological resources the least, as biomonitoring and research activities would not occur.

NMFS DECISION AND FACTORS CONSIDERED IN THE DECISION

Decision

NMFS hereby adopts and implements actions described under the following six alternatives: Alternative A4, Alternative B3, Alternative C3, Alternative D3, Alternative E3, and Alternative F3. These alternatives are summarized below and described in greater detail in Chapter 2 of the FPEIS.

Alternative A4 (SAs and Response): NMFS will implement the final SA Criteria and the new SA template will be utilized for all new SAs. NMFS will continue current and future stranding response activities under the SAs.

Alternative B3 (Carcass Disposal): The current methods of carcass disposal will continue. NMFS will recommend the removal of chemically euthanized animal carcasses off-site for disposal by incineration, landfill, or other methods.

Alternative C3 (Rehabilitation Activities): New SAs will be issued and NMFS will continue rehabilitation activities. NMFS will implement the final Rehabilitation Facility Standards.

Alternative D3 (Release of Rehabilitated Animals): New SAs will be issued and NMFS will continue current release activities, with the ability to modify release activities (adaptive changes) as necessary. NMFS will implement the final Release Criteria. The final Release Criteria will only apply to marine mammals under NMFS jurisdiction, as SA holders are only authorized to respond to NMFS species. The Release Criteria in Appendix C of the FPEIS includes criteria for the release of manatees. Manatee release criteria were not analyzed in the FPEIS, as manatees are under FWS jurisdiction and are not included in SAs. These guidelines are currently being revised by FWS.

Alternative E3 (Disentanglement Activities): NMFS will continue current disentanglement activities on the U.S. east coast and modify activities on the U.S. west coast. NMFS will implement the final Disentanglement Guidelines and training prerequisites.

Alternative F3 (Biomonitoring and Research Activities): NMFS Office of Protected Resources, Permits, and Conservation and Education Division will issue the MMHSRP, a new ESA/MMPA scientific research and enhancement permit. The permit will include current and future biomonitoring and research activities.

The rationale for this decision is discussed below. The environmental analysis documented in the FPEIS fully supports this rationale.

Rationale for the Decision

NMFS selected Alternatives A4, B3, C3, D3, E3, and F3 after a comprehensive review of the relevant environmental, economic, and social consequences of the alternatives. In making this decision, NMFS fully considered the goals of the MMPA and the ESA.

SAs and Response: Under Alternative A4, NMFS would implement the final SA Criteria and continue issuing SAs to current and new applicants utilizing the criteria. This alternative would continue current stranding response activities and allow for new, future stranding activities. NMFS would allow modifications to stranding activities (*e.g.*, response procedures, euthanasia techniques). The other 4 alternatives would either end response, would not implement the SA Criteria, and/or would limit response to threatened, endangered, or rare animals. Alternative A4 would allow an efficient and effective stranding network that can adapt to changes as necessary. The SA Criteria would ensure that only qualified and experienced organizations are participating in the stranding network.

Carcass Disposal: Alternative B3 would continue the current carcass disposal methods, with the ability to modify methods. NMFS would recommend the removal of chemically euthanized

animal carcasses off site for disposal. This would have a beneficial impact on the surrounding biological resources by removing the risk of contamination. The ability to modify methods as new information or techniques become available would also benefit the environment.

Rehabilitation Activities: Under Alternative C3, NMFS would implement the final Rehabilitation Facility Standards. The standards would ensure a healthy environment for animals, maximize the success of rehabilitation, and increase the potential for release to the wild. Current rehabilitation activities would continue and new rehabilitation facilities could be designated. Under this alternative, activities may change with improvements in technologies, techniques, and other aspects of marine mammal medicine.

Release Activities: Under Alternative D3, NMFS would implement the final Release Criteria. Current release activities would continue, with the ability to modify activities when necessary. The other alternatives would either end the release of rehabilitated animals or would continue current activities without the ability to make adaptive changes. Alternative D3 is the only alternative that would implement the Release Criteria, which is necessary to minimize the potential for disease transmission from a release animal to the wild population. Under the Release Criteria animals would also be developmentally and behaviorally cleared before release occurred, enhancing their chance for survival.

Disentanglement Activities: Alternative E3 is the only alternative that would continue the current disentanglement activities, and give NMFS the ability to add new responders and modify activities (e.g., tools, methods) as necessary. Only Alternative E3 would implement the Disentanglement Guidelines and training prerequisites.

Biomonitoring and Research Activities: Alternative F3 is the only alternative under which NMFS would issue a new ESA/MMPA scientific research and enhancement permit that would include current and new biomonitoring and research activities. This alternative would allow the MMHSRP to effectively carry out activities pursuant to the mandates of the MMPA to rescue marine mammals, specifically ESA-listed species, and investigate causes of mortality/morbidity. Research on causes of mortality and morbidity of ESA-listed species provides managers with biological and ecological information important to identify, evaluate, and resolve conservation problems for such species. The addition of new activities would allow NMFS to conduct health assessment studies on additional cetacean species, engage in acoustic research (recordings and playbacks), and develop new tools, equipment, and methods to collect health information.

Public Comments

Public and agency comments on the proposed alternatives were solicited, considered, and addressed, as appropriate, by NMFS throughout the NEPA process. Comments on the FPEIS were received over a 30-day period, ending on April 6, 2009. NMFS considered these comments when making its decision. A summary of the comments follows.

The Environmental Protection Agency rated the FPEIS as LO- Lack of Objections, on April 3, 2009. NMFS received a concurrence letter from the FWS stating that the proposed activities may affect, but are not likely to adversely affect, threatened and endangered species under FWS

jurisdiction. The FWS also provided comments separately, the most significant related to the manatee release criteria provided in Appendix C of the FPEIS. We have noted in this ROD that the release criteria for manatees were not analyzed in the FPEIS and the FWS is currently revising these criteria.

MITIGATION MEASURES

Section 1505.2(c) of the CEQ regulations state that the ROD shall state whether all practicable means to avoid or minimize environmental harm from the alternative(s) selected have been adopted, and if not, why they were not. Chapter 5 in the FPEIS describes a number of ways the selected alternatives will mitigate potential adverse effects of the proposed actions.

The Policies and Best Practices for Marine Mammal Stranding Response, Rehabilitation and Release serve as mitigation measures to minimize impacts not only to stranded marine mammals, but to the surrounding environment. The final Rehabilitation Facility Standards and Release Criteria serve as mitigation measures to minimize impacts from the release of rehabilitated animals. Additional mitigation measures will be implemented to minimize the potential for disease transmission from rehabilitated ice seals to wild populations in NMFS' Alaska Region. NMFS will not authorize responders to transport stranded ice seals beyond the geographic areas where they strand for the purposes of rehabilitation and release back to the wild. NMFS will review the following situations on a case-by-case basis: 1) an ice seal out-of-habitat; 2) ice seals as part of an official UME; and 3) stranded spotted seals in Bristol Bay, Alaska. NMFS may re-evaluate this policy at any time, particularly with regard to changes in the status of ice seal populations and their habitat.

Mitigation measures for the biomonitoring and research activities would be set forth by NMFS' Office of Protected Resources, Office of Permits, Conservation and Education Division as conditions under the ESA/MMPA permit.

CONCLUSION

Through the NEPA process and as documented in this ROD, NMFS has considered the objectives of the proposed actions and analyzed a reasonable range of alternatives to address these objectives. The impacts of these alternatives on the human environment were evaluated. NMFS considered public and agency comments throughout the NEPA process. Taking all these factors into account, NMFS has decided to implement the MMHSRP activities included in the FPEIS under Alternatives A4, B3, C3, D3, E3, and F3. The actions conducted under these alternatives effectively meet the MMHSRP's mandates under Title IV of the MMPA while minimizing the potential environmental impacts from the proposed actions.

CONTACT INFORMATION

For further information on this ROD and NMFS' decision, interested parties may contact David Cottingham, Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.



Director, NMFS Office of Protected Resources

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Date