



# MARINE MAMMAL COMMISSION

11 May 2011

Mr. P. Michael Payne, Chief  
Permits, Conservation, and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's draft environmental assessment for the issuance of a public display permit for the placement of releasable, rehabilitated California sea lions at the Institute for Marine Mammal Studies in Gulfport, Mississippi (76 Fed. Reg. 19976).

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service consider whether the precedent-setting nature of this and similar permit applications warrants the preparation of an environmental impact statement and, at a minimum, that the Service should expand the discussion in the environmental assessment to explain why it believes that adoption of such a policy is not considered significant. The Marine Mammal Commission further recommends that the National Marine Fisheries Service, in consultation with the Commission and other interested parties, conduct a review of issues related to the roles, rights, and responsibilities of the Permit Office, rehabilitation facilities, and public display facilities in determining whether, when, and where to place releasable, rehabilitated marine mammals and adopt policies to resolve those issues.

## RATIONALE

In general, the Commission concurs with the Service's conclusion that placing eight California sea lions at the public display facility, rather than returning the animals to the wild, would not significantly affect the quality of the human environment. As such, preparation of an environmental impact statement on this action normally would not be required. However, applicable regulations (40 C.F.R. § 1508.27) implementing the National Environmental Policy Act direct agencies to consider both the context and intensity of their actions when determining significance and to identify specific factors that should be evaluated. Among those factors is "the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration."

It is not entirely clear to what extent the proposed issuance of this particular public display permit would establish a precedent-setting policy regarding the retention of releasable, rehabilitated marine mammals for purposes of public display rather than returning the animals to the wild pursuant to section 109(h)(3) of the Marine Mammal Protection Act. As discussed in the draft environmental assessment, this is the third such document evaluating similar actions. However, as far as the Commission is aware, the Service has yet to prepare an analysis, be it an environmental

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assessment or an environmental impact statement, of the adoption of a general policy concerning transfers of releasable, rehabilitated marine mammals to public display facilities for permanent maintenance in captivity. The Commission believes that adoption of such a policy, and the precedent-setting nature of this and similar permit applications, may rise to the level where a broader National Environmental Policy Act review is required. The Marine Mammal Commission therefore recommends that the National Marine Fisheries Service consider whether the precedent- setting nature of this and similar permit applications warrants the preparation of an environmental impact statement. At a minimum, the Service should expand the discussion in the environmental assessment to explain why it believes that adoption of such a policy is not considered significant.

In addition, the analyses in the draft environmental assessment do not explore fully all of the relevant issues for this and similar permits. For example, the discussion of the Marine Mammal Protection Act notes that section 104(c)(2) authorizes the Service to issue permits to take or import marine mammals for purposes of public display. However, nowhere does it discuss section 109(h), the provision under which stranded marine mammals are collected from the wild and maintained at rehabilitation facilities. Section 109(h)(3) allows the Service to authorize facilities to take and treat marine mammals when necessary for the protection and welfare of the animals. However, that provision further directs that “[i]n any case in which it is feasible to return to its natural habitat a marine mammal taken...under circumstances described in this subsection, steps to achieve that result shall be taken.” Although the Commission recognizes the rationale for allowing a display facility to obtain releasable marine mammals from a rehabilitation facility in lieu of collecting animals from the wild, the Service nevertheless should discuss the relationship between the mandates of sections 104 and 109 of the Act. Most notably, the Service should explain its rationale for determining that the permit provisions supersede the clear directive of section 109(h) that all rehabilitated marine mammals be returned to the wild whenever feasible.

If, as appears to be the case, the Service is routinely going to allow the retention of releasable, rehabilitated marine mammals for purposes of public display, it also needs to adopt policies that address the details of such arrangements. The Commission recognizes that most rehabilitation facilities receive authorization from the Service under section 112(c) to capture, care for, and release stranded marine mammals. The Service has considerable latitude regarding how it can and does condition those authorizations. Nevertheless, facilities spend considerable time and money rescuing, feeding, and providing medical attention to stranded and injured marine mammals with the expectation that successfully rehabilitated animals will be returned to the wild. Deviating from this practice raises several questions that the Service has yet to address. Does a facility’s investment in caring for and preparing an animal for release afford it a say in the fate of the animals it rescues? Can the Service force a rehabilitation facility to provide releasable marine mammals to a public display facility against its will? Should the recipient public display facility be required to compensate the rehabilitation facility for some or all of its expenses related to the care and maintenance of animals during rehabilitation?<sup>1</sup>

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<sup>1</sup> We note in this regard that, by obtaining releasable animals that will have had medical examinations conducted by a rehabilitation facility and, in all likelihood, will be accompanied by a comprehensive medical history, the recipient public display facility likely will realize savings by not having to fund capture activities and health screening that would be required when collecting marine mammals from the wild.

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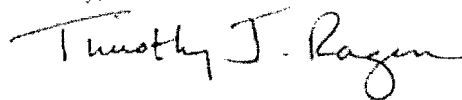
Questions concerning the degree of discretion that should be accorded to the recipient facility also need to be addressed. Should the display facility have exclusive say regarding which available animals it selects? Can the Service require the recipient facility to accept non-releasable marine mammals in lieu of securing releasable animals or collecting animals from the wild, even if non-releasable animals might not meet all of the specifications set by the display facility? How will the disposition of releasable animals affect the Service's ability to find facilities for non-releasable animals?

Further, if the Service is going to authorize the placement of releasable marine mammals at display facilities, it should address what role, if any, it intends to play in determining where particular animals are placed. Should the Service defer to the discretion of the rehabilitation and recipient facilities to decide which animals go where? Should those public display facilities with the earliest permits be given priority for obtaining animals until their needs are met? Should all permit holders take turns as releasable animals of the desired age classes and sexes become available? In this regard, the Commission notes that demand for releasable marine mammals by public display and other facilities easily could surpass the supply, particularly given the Navy's recent interest in securing similar healthy, trainable animals for national defense purposes under the authority of 10 U.S.C. § 7524.

These questions reflect some of the key issues that the Service needs to resolve if it is going to authorize the transfer to and retention of releasable, rehabilitated marine mammals at public display facilities. It is by no means an exhaustive list. This being the case, the Marine Mammal Commission recommends that the National Marine Fisheries Service, in consultation with the Commission and other interested parties, conduct a review of issues related to the roles, rights, and responsibilities of the Permit Office, rehabilitation facilities, and public display facilities in determining whether, when, and where to place releasable, rehabilitated marine mammals and adopt policies to resolve those issues.

Please contact me if you have questions regarding the Commission's recommendations and comments.

Sincerely,

A handwritten signature in black ink that reads "Timothy J. Ragen". The signature is written in a cursive, slightly slanted style.

Timothy J. Ragen, Ph.D.  
Executive Director



May 11, 2011

Sent via Email and US Mail

Mr. Michael Payne  
Permits Division  
Office of Protect Resources  
NOAA Fisheries  
1315 East West Highway  
Silver Spring, MD 20901

**Subject: IMMS sea lion permit application. File No. 15537**

Dear Mr. Payne:

The Institute for Marine Mammal Studies (“IMMS”) would like to submit this comment on its permit application (File No. 15537) in order to address an issue we understand has been raised by a few individuals. Specifically, we have been advised that some people have asserted the IMMS permit application is “controversial”. We do not understand how that can be the case, and would like to address this issue directly.

**Public Display.** Some people are opposed to the public display of marine mammals. For these people, any permit related to public display will always be controversial. However, Congress not only authorized the public display of marine mammals in the Marine Mammal Protection Act (“MMPA”) but Congress encouraged public display. Indeed, the legislative history of the MMPA is replete with statements about the importance of public display to educate the public about the need to conserve marine mammals and their habitat. For people opposed to public display, their recourse is to Congress. However, until Congress changes the law, opposition to IMMS’ permit based on any “controversy” about public display is without legal or policy foundation.

**Impact of the Taking.** IMMS proposes to take eight California sea lions from the wild. NMFS has determined that **8,511 animals** can be removed from the population annually without harming or affecting that population. IMMS proposes to remove less than one tenth of one percent (**.001%**) of the total number of sea lions that can be removed annually without adversely affecting the species, whose current population is estimated by NMFS to be 238,000 and growing. The sea lion population in California is considered beyond the carrying capacity of the ecosystem and thousands of animals are stranding and/or are dying every year. It is hard to see how removing eight stranded animals could possibly create any biological or scientific controversy.

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**Precedent.** IMMS' permit application is consistent with two prior permits to take sea lions that were granted by NMFS in 2005 and 2008. Each permit sought to do exactly what IMMS proposes, to take stranded California sea lions. One permit application that was granted asked to take four California sea lions and two members of another species. The other permit application that was granted proposed to take eight animals from each of five species, including California sea lions. Indeed, IMMS' permit application is identical to the two previously approved permits in that none of the applications have sought to go into the wild and to remove healthy sea lions from the ocean. Rather, each of the prior permits, just like IMMS' application, involved the taking of animals that have already stranded. Such animals are likely to have already been rejected by the wild or they would not have stranded.

The taking of marine mammals from the wild for public display is specifically permitted in the MMPA, and is consistent with the goals and objectives of the MMPA. If people find that "controversial," their recourse, again, is to Congress. However, as noted in the preceding paragraph, IMMS would think that its permit application to **take** animals that have already stranded would be the least "controversial" and the most humane of any method of taking.

We appreciate the opportunity to offer these comments, and look forward to working with NMFS regarding IMMS' permit application.

Sincerely,



Moby Solangi, Ph.D.  
President

Cc: Mr. Jim Lecky, NOAA  
Ms. Jennifer Skidmore, NOAA  
Mr. George Mannina, Nossaman



# Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003 • [www.awionline.org](http://www.awionline.org)  
telephone: (202) 337-2332 • facsimile: (202) 446-2131

May 10, 2011

Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway, Room 13705  
Silver Spring, MD 20910

By email: [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov)

**Re: File No. 15537: Notice of availability of an EA prepared in response to a request from IMMS to acquire eight stranded, releasable California sea lions (Fed. Reg. Vol 76, No. 9, Pages 19976-7).**

Dear Mr. Payne:

The Animal Welfare Institute (AWI) submits the following comments in response to the above-referenced Environmental Assessment (EA) and on behalf of the International Marine Mammal Project of Earth Island Institute. The stated purpose of the request to acquire the releasable sea lions by the Institute for Marine Mammal Studies (IMMS) is for public display in its new facility, the Center for Marine Education and Research.

AWI submitted comments in response to a previous Federal Register notice on this request in July, 2010. In our comments we stated that we were appalled that NMFS is even considering this request and after reading the EA, this sentiment is now even stronger. The notion of keeping healthy, releasable animals in captivity purely for breeding and public display purposes is absurd, sets and incredibly bad precedent and is unlawful. AWI urges NMFS to deny the applicant's request.

***NMFS has not followed proper procedure for this request***

NMFS did not complete and make public the Environmental Assessment, required under the National Environmental Policy Act, until just recently. This analysis should have been completed *before* publishing the permit request by IMMS and should have been issued along with the notice of the availability of the permit request. Given that the EA was issued just recently and not in July 2010 along with the notice of availability, it would be inappropriate to issue this permit as the proper procedures were not followed.

***If approved the proposal would contravene federal regulations***

NMFS regulations [50 C.F.R. 216.27(a)(1)] regarding the release/non-releasability and disposition of stranded animals state that "any marine mammal held for rehabilitation must be released" within six months of capture, and clearly indicate that it is referencing release to the wild. It is not intended to allow healthy animals to be transferred to captive display facilities for breeding and display purposes. The draft EA on the IMMS permit request conflicts with these regulations.

***The justification for the request is inappropriate and a misuse of stranding networks***

The applicant states that the reason for its request to take releasable, stranded sea lions is because of a lack of animals available through other facilities and the very long list of facilities waiting to receive non-releasable sea lions. Impatience is hardly justification to keep a stranded, releasable sea lion in captivity. It is clear that the applicant is attempting to create a new method of obtaining animals for public display.

The applicant refers to the prevalence of “nuisance” sea lions and suggests that humans may also benefit from the removal of these eight sea lions because this will somehow reduce the number of negative human-sea lion interactions. The applicant is asking NMFS to operate on the assumption that all sea lions are nuisance animals which is entirely groundless.

The applicant also demonstrates a serious lack of understanding of the causes of sea lion strandings. In its application, it states that “[I]n most cases, when an animal strands, nature has rejected it, and it is no longer part of the ecosystem.” This notion is completely false and should not be used to justify why it is somehow permissible to use these presumably “rejected” animals for personal use. There are a variety of reasons why sea lions might strand, some of them being entanglement, malnutrition, gunshot wounds, and exposure to toxins such as domoic acid – none of which demonstrate nature’s “rejection”.

Furthermore, the applicant has stated that it will not consider animals who are disabled or impaired in any way. It is not even seeking to rescue animals that have been subject to disease, trauma or other stresses, but instead is seeking animals who are healthy and able to be integrated back into the wild. In doing so, the applicant would not only be removing these healthy animals from the wild, preventing them from adding to the gene pool, but also denying potential placement for non-releasable sea lions who would otherwise face euthanasia for lack of placement. By asking that stranding networks turn over custody of animals who stranded and were rehabilitated and able to be released, the applicant is blatantly attempting to use stranding networks as agents of capture to remove marine mammals from the wild, a purpose that is absolutely not consistent with that of stranding networks. We are not alone in our concern over this dangerous precedent-setting decision, should the request be allowed. In its comments on the notice of availability of the permit request made by IMMS, the Marine Mammal Commission stated that it “has serious concerns about whether a captive breeding program for California sea lions should be authorized, given the frequent availability of non-releasable individuals that could be housed in public display facilities.”

The EA fails to take into account the time and financial resources that stranding networks have already put forth and the additional resources that would be needed if this permit was approved. Stranding networks have put many resources into caring for stranded sea lions with the intention of releasing them back into the wild. Since the applicant asks to review lists of available animals and choose the animals he wants, stranding networks will likely need to put forth additional resources to care for animals ready for release until the applicant can review the list of animals. The impact of the economic burden on the stranding network has not been analyzed in the EA nor has the potential for even more resources going towards maintaining healthy, releasable animals in captivity awaiting a decision by the applicant.

***The proposal, if successful, would have no educational value***

The applicant stated in its application that it is only interested in “healthy, young animals that will be able to perform shows and educational demonstrations for the general public” and that the sea lions will be used in “meet-and-greet type scenarios – such as posing for photos with guests, shaking hands/flippers with guests, and other educational activities.” AWI does not recognize any educational value in meet-and-greet type scenarios, posing for photos with sea lions or shaking hands with sea lions. On the contrary, the only “education” delivered to the paying public is that it is acceptable to demean animals for the sake of human entertainment. As elucidated during the April 27th House of Representatives Subcommittee oversight hearing<sup>1</sup> on marine mammal captivity, captive marine mammal facilities are currently self-prescribing the term “educational” to their activities. Further evaluations of these so-called “educational activities” are not conducted by an independent authority such as NMFS. AWI maintains that such an evaluation is urgently necessary to ensure that such programs actually provide accurate and well-balanced information to the public.

The applicant also states that “If sea lions and other marine mammals can captivate the public by being a vital part of an educational message about marine conservation, then as the oceans benefit from better conservation practices, so will human beings.” We challenge the veracity of this statement, which is not and cannot be backed up with credible, quantifiable supporting evidence. This issue was also discussed during the Subcommittee hearing and continues to be an ongoing concern of AWI.

***By issuing a permit, NMFS would be setting an incredibly dangerous precedent***

Granting the applicant’s request to remove healthy, releasable sea lions for public display would set a terrible precedent and would undoubtedly pave the way for other facilities to make similar requests. This would be unfortunate for the animals involved, would limit the amount of space available for non-releasable animals and return the United States to the days of indiscriminate removal of animals from the wild for public entertainment.

AWI respectfully requests you deny the request of the Institute for Marine Mammal Studies to acquire eight healthy, releasable California sea lions for public display purposes. Thank you for your consideration.

Sincerely,



Susan Millward  
Executive Director

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<sup>1</sup> Subcommittee on Insular Affairs, Oceans and Wildlife Oversight Hearing, “Marine Mammals In Captivity: What Constitutes Meaningful Public Education?”





**THE HUMANE SOCIETY**  
OF THE UNITED STATES

May 11, 2011

*Via Electronic Mail*

P. Michael Payne, Chief  
Permits, Conservation and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway, Rm. 13705  
Silver Spring, MD 20910  
[NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov)

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**Re: Comments on Environmental Assessment for IMMS Permit Application, File No. 15537**

Dear Mr. Payne,

On behalf of The Humane Society of the United States (HSUS) and our over 11 million members and supporters, I am writing to oppose the preferred alternative in the Draft Environmental Assessment (EA) issued by the National Marine Fisheries Service (NMFS) in response to a public display permit application received from the Institute of Marine Mammal Studies (IMMS). 76 Fed. Reg. 19,976 (April 11, 2011). HSUS believes that the preferred alternative—the authorization of the acquisition of releasable California sea lions by IMMS for purposes of public display—does not comply with the Marine Mammal Protection Act (MMPA), nor its implementing regulations. Moreover, the Draft EA is woefully inadequate and fails to meet the legal requirements of the National Environmental Policy Act (NEPA). For these reasons, HSUS urges NMFS to adopt the no action alternative and deny IMMS's permit.

In order to effectuate comprehensive public comments on proposed permits, NMFS is required to issue NEPA documentation or a statement that the proposed action is categorically excluded from NEPA analysis at the time it issues notice of receipt of a complete permit application. See 50 C.F.R § 216.33(d)(1)(iv). However, NMFS was silent on the NEPA implications of IMMS' permit application in the Federal Register notice confirming receipt of IMMS' complete application and did not issue notice of its Draft EA until April 11, 2011, almost a year after publication of the permit application. See

76 Fed. Reg. 19,976 (April 11, 2011); 75 Fed. Reg. 28,239 (May 20, 2010). Because NMFS did not publish any NEPA documentation along with its notice of IMMS's permit application, as required by law, HSUS hereby incorporates into this comment letter its comments on IMMS's permit application, submitted on June 10, 2010 in response to the notice of IMMS's permit application.

## **I. The National Environmental Policy Act**

NMFS's Draft EA does not satisfy NEPA. NEPA is America's "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA ensures that federal agencies "will have available, and will carefully consider, detailed information concerning significant environmental impacts" and that such information "will be made available to the larger [public] audience that may play a role in both the decisionmaking process and the implementation of the decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

To this end, NEPA requires federal agencies to prepare a detailed Environmental Impact Statement (EIS) for any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). NEPA evaluation must take place "*before* decisions are made and *before* actions are taken." 40 C.F.R. § 1500.1(a) (emphasis added). Such an approach ensures that agencies will take the requisite "hard look" at environmental consequences *before* approving any major federal action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976). "It is only when the proposed action "*will not* have a significant effect on the human environment," 40 C.F.R. § 1508.13 (emphasis added), that an EIS is not required." *National Audubon Soc. v. Hoffman* 132 F.3d 7, 13 (2nd Cir. 1997). Wherever a question exists as to whether an EIS is required, an agency must ordinarily at least prepare an EA, which is used to determine whether the environmental effects of the action are "significant" and therefore require the preparation of an EIS. 40 C.F.R. § 1501.4. An EA is "a concise public document that briefly provides evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact." *Id.* at § 1508.9. Similar to an EIS, an EA must contain a description of the purpose and need of the proposed action, an analysis of the environmental effects of the proposed action, as well as a range of reasonable alternatives and the environmental effects of such alternatives. *Id.* at § 1508.9(b).

## **II. NMFS Should Have Prepared an EIS on the Proposed Action**

The Council on Environmental Quality (CEQ) has promulgated regulations implementing NEPA that are "binding on all Federal agencies." 40 C.F.R. § 1500.3. These regulations instruct that whether an action will have a "significant" impact on the environment, thus warranting the preparation of an EIS, requires considerations of both "context" and

“intensity.”<sup>1</sup> 40 C.F.R. § 1508.27. The presence of any one of CEQ’s “significance” factors “should result in an agency decision to prepare an EIS.” *Pub. Serv. Co. v. Andrus*, 825 F.Supp. 1483, 1495 (D. Idaho 1993); *see also See LaFlamme v. FERC*, 852 F.2d 389, 398 (9th Cir.1988).

If “substantial questions as to whether a project. . .may cause significant degradation of some human environmental factor,” an EIS must be prepared. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998). Accordingly, in order for a court to find that an EIS is warranted, “a plaintiff need not show that significant effects will in fact occur” only that there are “substantial questions whether a project may have a significant effect on the environment.” *Nat. Resource Defense Council v. Winter*, 502 F.3d 859, 867 (9th Cir. 2007) (citations omitted). Here, substantial questions exist as to the effects of the proposed action on the environment, triggering NMFS’s duty to prepare an EIS.

#### A. The Proposed Action Threatens a Violation of Federal Laws

NMFS must prepare an EIS because the proposed action threatens a violation of the MMPA and its implementing regulations—federal laws imposed to protect the environment.<sup>2</sup> *See* 40 C.F.R. § 1508.27(b)(10) (in determining the significance of a proposed action’s effects on the environment, an agency must evaluate “[w]hether the action threatens the violation of a Federal, state or local law...imposed for the protection of the environment.”).

##### *i. The Proposed Action Threatens a Violation of the Marine Mammal Protection Act*

Pursuant to Section 109(h) of the MMPA, federal and state officials “or a person designated under section 112(c)” are authorized to take marine mammals if the taking “is for the protection or welfare of the mammal.” 16 U.S.C. § 1379(h)(1). The provision then expressly requires that “[i]n any case where it is feasible to return to its natural habitat a marine mammal taken or imported under the circumstances described in this subsection, steps to achieve that result *shall be taken*.” *Id.* § 1379(h)(3) (emphasis added). The MMPA’s stranding response provisions then authorize NMFS to enter into agreements pursuant to Section 112(c) with stranding responders to implement Section 109(h). *Id.* § 1421b(a). In other words, stranding response and rehabilitation is authorized pursuant to Section 109(h), and all animals taken pursuant to that authority *must be released* to the wild if the

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<sup>1</sup> “Context” means that the significance of an action must be analyzed in several different contexts (i.e. national, regional, and local significance of the action) and “intensity” refers to the severity of the impact. *Id.*

<sup>2</sup> Congress enacted the MMPA to, *inter alia*, ensure that marine mammals are “protected and encouraged to develop to the greatest extent feasible. . .[in order] to maintain the health and stability of marine ecosystems.” 16 U.S.C. § 1361(6).

release “is feasible.”<sup>3</sup> *Id.* § 1379(h)(3). If NMFS were to permit IMMS to reduce to captivity rehabilitated, healthy sea lions, NMFS would violate this express statutory mandate.

*ii. The Proposed Action Threatens a Violation of NMFS’s Implementing Regulations*

Moreover, NMFS’s implementing regulations also state that “any marine mammal held for rehabilitation *must be released* within six months of capture or import” unless the attending veterinarian determines that (1) the animal may adversely affect wild marine mammals; (2) the release will likely not be successful, given the condition or behavior of the animal; or (3) more time is needed to make an assessment. 50 C.F.R. § 216.27(a) (emphasis added). Releasability in the latter case must be reevaluated at intervals of no less than 6 months for up to 24 months “at which time there will be a rebuttable presumption that release into the wild is not feasible.” *Id.* This makes it clear that the term “release” refers to release to the wild and that healthy marine mammals are expected to be released into the wild. While Section 216.27(c) governs transfer of stranded animals to a captive facility for scientific or public display purposes, NMFS should interpret this as applying only to non-releasable animals in light of the statutory mandate to release releasable animals whenever feasible. Neither the MMPA nor NMFS’s implementing regulations sanction keeping releasable animals in captivity indefinitely, absent a valid veterinary concern.

Even assuming, *arguendo*, that the statute and regulations could be fairly read to allow NMFS under certain circumstances to authorize the transfer of otherwise releasable animals to public display facilities (which it cannot), the statute at a minimum creates a strong presumption against any such transfer – and certainly a presumption against transferring rehabilitated (and releasable) sea lions to a public display facility “for convenience” and which has serious credibility and competency issues. As discussed below, the record in this matter does not come close to rebutting any such presumption.

*iii. Approving the Proposed Action Would Constitute an Abuse of Discretion*

Even if NMFS could lawfully authorize the permanent transfer of a releasable marine mammal to a public display facility, to do so in this context would be an abuse of discretion. The record in this case is overrun with references to the applicant’s lack of fitness; references to misrepresentations, mischaracterizations and inaccuracies made by IMMS in its permit application; and references as to how approving the decision would be a terrible public policy decision.

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<sup>3</sup> Although the statute does not define “feasible”, these statutory provisions indicate that NMFS must make every effort to return a releasable marine mammal to the wild, if possible to do so. *See* 58 Fed. Reg. 53,320 (Oct. 14, 1993) (in its 1993 proposed rulemaking implementing the stranding response authority, NMFS explained that “consistent with section 109(h)(3), the proposed regulations would require the release of the rehabilitated marine mammals to the wild, if feasible.”).

In order to grant a permit application for public display, NMFS must first find that an applicant satisfies the issuance criteria of 50 C.F.R. § 216.34. Those criteria require NMFS to find, *inter alia*, that IMMS's "expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application" and that IMMS's "qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal." 50 C.F.R. § 216.34(5), (6). The record in this case establishes that IMMS fails to meet these issuance criteria by a wide margin:

- "[W]e must, for the sake of completeness, state that APHIS has been approached by multiple parties that question the fitness of the applicant to care for marine mammals under the Animal Welfare Act." Letter from Barbara Kohn, Senior Staff Veterinarian, APHIS to Jennifer Skidmore, Office of Protected Resources, NMFS (June 21, 2010).
- A commenter who worked indirectly with Dr. Solangi<sup>4</sup> but directly with animals under his care described a healthy bottlenose dolphin who was overdosed with medication to alter his aggressiveness and was found dead at the bottom of a pool the next day. Email from Laura J. Bottoro, Behaviorist, Curator to NMFS (June 13, 2010, 10:42:42 EST) (requesting NMFS to take a careful look at the history and number of deaths before giving Dr. Solangi another permit to keep marine mammals).
- "I was a bookkeeper at Marine Life and Marine Animal Productions ... I don't believe that he should be allowed to have any animals on a permanent basis." Letter from Paula Carrigan to NMFS (June 21, 2010). The commenter describes how Dr. Solangi was utterly unprepared during hurricane Katrina and his disregard for the animals, commenting that "all Moby is concerned about is the almighty Dollar, not the animals. He only wants the animals so that he can continue to get Federal Grant money." *Id.*
- "I worked as a dolphin and sea lion trainer for Marine Animals Productions. . . of which Dr. Moby Solangi was President and CEO. It is my opinion, that during my time of employment, Dr. Solangi showed a gross disregard for the health and well being of his animals (bottlenose dolphins and California sea lions)." Email from Holly Edwards, PhD, Zoologist/ Research Scientist to NMFS (June 15, 2010, 9:11:33 EST). The comments continue by chronicling a number of specific issues. *Id.*
- "As a former employee of NMFS . . . , I am quite familiar with Dr. Solangy's [sic] reputation and former treatment of animals. It is clear from Dr. Solangy's [sic] prior neglect of marine mammals previously under his care that he cannot be trusted with maintaining them in captivity in a non-harmful manner, and does not have the best interest of the animals at heart." Email from Sara McDonald, Doctoral Student Marine Science and Conservation Program, Duke University Marine Laboratory to NMFS (June 21, 2010, 14:08:13 EST). She then chronicles a number of specific issues. *Id.*

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<sup>4</sup> Dr. Moby Solangi is the President and CEO of IMMS and the responsible party under the Draft EA.

- One commenter stated that “I worked with Moby. . . [and] left because I did not agree with most of the things he was doing. When he tried to cover up the death of animals (dolphins and sea lions) I openly disagreed with him, especially since we were doing government collections at the time, I knew we had to have all our records and documentation correct.” Letter from Teri Miles to NMFS (June 16, 2010). Her comments to discuss cover-up issues in more detail. *Id.*
- “I wish to add that, in my own opinion and direct experience with observing his husbandry and medical practices, that Dr. Solangi has no business directing a rehabilitation program or caring for marine mammals” and further explains how “appalled” he was at Dr. Solangi's “extreme use of drugs and medications on animals.” Letter from Frank Murru to P. Michael Payne, Chief, Office of Protected Resources, NMFS (June 21, 2010).
- “I worked for [Dr. Solangi's] company for 8 years and think he should not be given this permit based on his past history in keeping marine mammals. He is not doing this for the interest of the animals, this is purely for profit and his past behavior has been the bottom line/profits and he has compromised the health, safety and well being of these animals in exchange for this.” Email from Eydie Proffitt to NMFS (June 20, 2010, 12:41:03, EST).
- Another former employee of Dr. Solangi wrote a long letter describing substandard care Solangi gives to animals. Letter from Jeffrey Steg to NMFS (June 12, 2010). For example, he wrote “[u]nder Dr. Solangi's care prior to hurricane Katrina, he typically lost a couple of dolphins and/or sea lions each year to premature death from various causes both known and unknown during my fifteen years of employment.” *Id.* at 4.
- Another commenter, a commercial fisherman who took Dr. Solangi out to catch dolphins (and he apparently caught many), commented about how they caught a group of dolphins that “got wrapped up in the net and drown[ed]. I don't know if Moby ever reported this or not. My job was to run the boat and do what Moby told me to do. That day we took the Dead Dolphins over to Cat Island Channel (MS) and chucked them overboard.” Letter from Joseph Stevens to NMFS (June 21, 2010).

A 2010 inspection report by veterinarians of the NMFS and the Animal and Plant Health Inspection Service (APHIS) also casts serious doubt as to IMMS's fitness for keeping marine mammals. In this report by Janet Whaley (DVM) of NMFS and Laurie Gage (DVM) of APHIS, the expert veterinarians criticized, among other things, the outdated radiographic equipment and noted that there appeared no room in the medical facility adequate for the care of small cetaceans. Given that California sea lions are substantially larger and potentially more difficult to handle than dolphins, these criticisms would also seem to call into question whether the “high-quality health/medical care” that NMFS cites

in the Draft EA is in fact available to animals.<sup>5</sup>

In addition, NMFS's interpretation that it no longer has jurisdiction over marine mammals once they are reduced to captivity means that this is the agency's last chance to ensure the health and welfare of the sea lions at issue. To grant the permit to IMMS—a facility run by a man known to neglect the animals under his care—would be an abdication of NMFS's obligations to ensure the take of marine mammals is humane. *See* 16 U.S.C. § 1374(b)(2) (in order to issue a take permit, NMFS must determine “the manner [of take]. . . to be humane”); 50 C.F.R. 216.34 (in order to issue a permit to take a marine mammal, NMFS must find that “[t]he proposed activity is humane”).

The record in this case is also replete with references to misrepresentations, mischaracterizations and inaccuracies made by IMMS in its permit application:

- The Marine Mammal Center stated that “... the permit author inappropriately presents the community's efforts at defining best practice for release of rehabilitated animals as a general indictment against the release of healthy, rehabilitated marine mammals.” Letter from Jeff Boehm, Executive Director, Marine Mammal Center, to Chief, Office of Protected Resources, NMFS (June 21, 2010) (also describing additional “misrepresentations”).
- “This statement by IMMF [sic] is intended to obfuscate matters, since IMMF [sic] is not proposing to take animals that would otherwise have been euthanized.” Letter from William W. Rossiter, President, Cetacean Society International to P. Michael Payne, Office of Protected Resources, NMFS a 2 (June 20, 2010).
- One group of commenters discussed Dr. Solangi's use of their peer reviewed paper to question the advisability of releasing stranded animals - saying that “his citation of our paper in support of his request is misleading and inappropriate.” Letter from Michael Moore, Woods Hole Oceanographic Institution *et al.* to P. Michael Payne Chief, Office of Protected Resources, NMFS (June 5, 2010).
- Comments submitted by the Whale and Dolphin Conservation Society discuss how the “applicant goes on to contradict [his] claims within his own application,” and how they “believe the applicant is misleading in his interpretation of” cited material. Letter from Regina Asmutis-Silvia, Senior Biologist & Courtney S. Vail, U.S. Policy Officer, Whale and Dolphin Conservation Society to Michael Payne, Chief, Office of Protected Resources, NMFS (June 16, 2010).

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<sup>5</sup> IMMS's irresponsibility is underscored by the fact that IMMS has apparently failed to uphold its responsibilities as a marine mammal stranding network participant in the collecting and responsible retention of samples from dead animals that are potential evidence in the Deepwater Horizon incident. *See e.g.*, Rocky Kistner, *Gulf Residents: Please Take our Dolphins and Turtles Away*, NRDC Switchboard, Apr. 14, 2011, [http://switchboard.nrdc.org/blogs/rkistner/gulf\\_residents\\_please\\_take\\_our.html](http://switchboard.nrdc.org/blogs/rkistner/gulf_residents_please_take_our.html)

- Other comments describe “an extremely distorted and misleading message” and “falsely representing the natural environmental and the role of wildlife.” Letter from World Society for the Protection of Animals to P. Michael Payne, Chief, Office of Protected Resources, NMFS (June 14, 2010).

The record also contains a plethora of references as to how approving the application would be a terrible public policy decision and that NMFS has no basis on which to grant the permit:

- “The Commission also has serious concerns about whether a captive breeding program for California sea lions should be authorized, given the frequent availability of non-releasable individuals that could be housed in public display facilities.” Letter from Timothy J. Ragen, PhD, Executive Director, Marine Mammal Commission, to P. Michael Payne, Chief, Office of Protected Resources, NMFS at 2 (July 6, 2010).
- “Since there is not a need to breed pinnipeds in captivity (even though they do it quite well), there appears to be no reason to retain healthy sea lions from the stranding network for such purposes. If they are not needed as public display animals (plenty in US to go around) nor as breeding animals, there appears to be no medical, behavioral, or scientific reason to keep these animals from returning to their own environment.” Letter from APHIS at 2 (recommending denial).
- “We are appalled that NMFS is even considering this request. The notion of keeping healthy releasable animals in captivity purely for breeding and public display purposes is absurd.” Letter from Susan Millward, Executive Director, Animal Welfare Institute to P. Michael Payne, Office of Protected Resources, NMFS (June 21, 2010).
- “Impatience is hardly justification to keep a stranded, releasable sea lion in captivity. It is clear that the applicant is attempting to create a new method of obtaining animals for public display.” *Id.* at 2.
- “[W]e find the applicant's request for releasable sea lions more an indication of impatience motivated by profit, rather than education. Apparently, the waiting list for non-releasable stranded sea lions is too long....” Letter from Whale and Dolphin Conservation Society at 4.

In the Draft EA, NMFS asserts that the applicant is requesting a permit “to retain releasable rehabilitated California sea lions in lieu of taking from the wild in order to minimize the direct and indirect effects of their action on the wild population.” *Draft Environmental Assessment on the Effects of Issuance of a Public Display Permit for Rehabilitated California Sea Lions (Permit File No. 15537; Institute for Marine Mammal Studies)* (April 2011) at 2.2 (hereinafter Draft EA). However, while these sea lions had stranded, their successful rehabilitation would have resulted in their release to the wild. By preventing the release of animals that would otherwise be living in the wild, the



applicant is in essence “removing” them from the wild where they would otherwise be. As such, any impact is identical to IMMS having physically removed them itself.

As we pointed out in our comments on IMMS’s permit application, the applicant stated that a rationale for taking “releasable, stranded California sea lions” is “because there is a paucity of animals available through other public display facilities” and cites a “very long waiting list of 20 or more facilities that are waiting.” IMMS Application at IV.D. The applicant then suggests, apparently with only convenience in mind, that “for a facility that has no animals, waiting for a suitable non-releasable sea lion for a long, indefinite period of time is not a prudent option.” *Id.* It may not be an option that IMMS finds attractive, but it is hardly the fault of NMFS or the sea lions that the applicant built a captive display facility without any prospect of filling it with animals. The applicant must wait for non-releasable animals, just as must many other facilities.

Although NMFS previously issued two permits for acquisition of rehabilitated releasable marine mammals for the purposes of public display, Draft EA at 1.2, IMMS’s permit application stands in stark contrast to the earlier permit applications. For example, the application of Mystic Aquarium and Institute for Exploration states that it “will always consider taking a non-releasable animal first.” Mystic Application at IV.A. Further, Animal Training and Research International requested seals and sea lions “post-rehabilitation, stranded in the earlier stages of maternal care with decreased chances of post-release survival due to their extended period of human care and possible imprintation [sic] on people.” 69 Fed. Reg. 12,836, 12,837 (March 18, 2004).<sup>6</sup> Both applications demonstrate either a commitment to taking non-releasable animals over releasable animals or only taking releasable animals that stranded at such a time that their survival in the wild would be less likely. In contrast, IMMS indicated that it would only take animals who would be most likely to survive in the wild. *See* IMMS Application at IV.C.3 (stating that IMMS “will not consider disabled or impaired sea lions including but not limited to blind animals, animals that cannot walk or swim normally, or are otherwise not healthy and/or have illnesses or conditions that may affect their long-term health adversely. We would reserve the right to examine and accept or reject an individual animal based on the aforementioned criteria. Basically, we are interested in healthy, young animals...”). By requesting healthy, releasable sea lions, what IMMS seeks is no different than obtaining the sea lions from the wild. *See* Draft EA at 4.2 (recognizing that the permitted action “should be considered similar to a take from the wild.”). If NMFS were to grant the permit to IMMS, it would allow IMMS to evade the requirements of the MMPA that govern the careful and limited circumstances under which take from the wild can occur. *See e.g.*, 16 U.S.C. §§ 1374(b); 1373; 50 C.F.R. §§ 216.1–216.279.

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<sup>6</sup> According to the Draft EA, Animal Training and Research International has not yet acted on their permit and has not taken any releasable animals. Draft EA at 1.2.

Finally, the approval of IMMS's permit would require stranding networks to violate the agreement that they must sign to be granted authority to rehabilitate marine mammals.<sup>7</sup> This agreement permits stranding networks to “take live stranded marine mammals in a humane manner with the *goal of rehabilitation and release.*” NMFS, *National Template: Marine Mammal Stranding Agreement* (Feb. 2009) at Art. V.A (emphasis added). This agreement also requires that “[a]ny marine mammal eligible for release *must be released as early as possible* and no later than 6 months after being taken for rehabilitation unless the attending veterinarian determines that: the marine mammal might adversely affect marine mammals in the wild; release is unlikely to be successful due to the physical condition and behavior of the marine mammal; or more time is needed.” *Id.* at Art. V.A.3 (emphasis added). Any stranding network that permits IMMS to “select” its releasable animals will be in violation of its stranding network agreement.<sup>8</sup> Because approval of this permit threatens violations of federal laws, NMFS must prepare an EIS.

#### B. The Proposed Action Would Have a Precedential Effect

In considering whether to prepare an EIS, CEQ regulations also require an agency to consider “the extent to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” 40 C.F.R. § 1508.27(b)(6). “The purpose of that section is to avoid the thoughtless setting in motion of a ‘chain of bureaucratic commitment that will become progressively harder to undo the longer it continues.’” *Presidio Golf Club v. Nat'l Park Serv.*, 155 F.3d 1153, 1162-63 (9th Cir. 1998) (quoting *Sierra Club v. Marsh*, 769 F.2d 868, 879 (1st Cir.1985)).

NMFS cites to two previous permits it issued, both of which authorized the retention of releasable marine mammals for the purposes of public display. Draft EA at 1.2, 4.7. NMFS admits that as a result of this action, “other marine mammal public display facilities may explore the option of receiving a similar permit.” Draft EA at 4.7. If NMFS issues this permit it will become increasingly difficult for NMFS to deny any future application

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<sup>7</sup> As noted above, stranding networks have opposed issuance of this permit, and the fact that NMFS has proposed to effectively reduce them to agents of capture for public display facilities by adopting, for the first time, a system by which a public display facility can pick and choose what animals it wants from among the healthy and releasable animals in the stranding network's possession. Thus, the interests of stranding networks, such as the Marine Mammal Center, and their individual volunteers and employees would be adversely affected by NMFS' proposed decision.

<sup>8</sup> Moreover, the applicant seeks to have stranding networks in California provide IMMS with “pertinent information” on animals in their care and wishes the right to “evaluate and examine” each of the animals prior to determining if they are of interest to IMMS. IMMS Application at IV.C.1. Were NMFS to grant this request, NMFS might force stranding networks to maintain a healthy, releasable animal beyond the date the animal would otherwise have been released for the applicant's convenience while it evaluates whether it wants to take particular animals. This would require stranding networks to expend additional, limited financial and staff resources waiting for the applicant to make a decision about individual animals and thus would be forced to use their own limited resources to satisfy the desires of a public display facility.

authorizing the retention of releasable rehabilitated marine mammals for purposes of public display. This is particularly true in this instance because, in contrast to the previously issued permits, in which the applicants demonstrated a commitment to prioritizing retention of non-releasable animals, the record in this case establishes that IMMS has indicated it only wants healthy and releasable animals, and intends to take the animals as soon as possible and keep them permanently. It will also be difficult for NMFS to deny further permits to any public display facility after granting a permit to IMMS, given the substantial record evidence that Dr. Solangi has repeatedly neglected the animals under his care.<sup>9</sup> The combination of IMMS's audacious request (especially when compared to those of previous applicants) and Dr. Solangi's history of neglecting animals significantly degrades the standard upon which NMFS will evaluate future applications. In other words, if NMFS grants a permit based on IMMS' application and the record before it, NMFS will have established a precedent that creates a huge loophole in Section 109(h) of the MMPA.

NMFS recognizes that that the permitted action "should be considered similar to a take from the wild", Draft EA at 4.2, but ignores the fact that granting the permit would result in a circumvention of the laws that govern the careful and limited circumstances under which capture of healthy wild animals for the purposes of public display is allowed. *See e.g.*, 16 U.S.C. §§ 1374(b); 1373; 50 C.F.R. §§ 216.1–216.279. Granting the permit would encourage other public display facilities to pursue the same unlawful mechanism by which to obtain marine mammals. This is exactly the kind of "thoughtless setting in motion of a chain of bureaucratic commitment" that NEPA guards against. *Presidio*, 155 F.3d at 1162. Thus, NMFS must conduct an EIS in order to prevent the trend of granting such permits without an adequate analysis as to the environmental effects of such actions.<sup>10</sup>

### C. The Proposed Action Would Have Cumulatively Significant Impacts

CEQ regulations also require the preparation of an EIS if the proposed action "is related to other actions with individually insignificant but cumulatively significant impacts." 40 C.F.R. § 1508.27(b)(7). "Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment." *Id.* A cumulative impact is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency ... or person undertakes such other actions. Cumulative impacts can result from individually

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<sup>9</sup> According to the Draft EA, Animal Training and Research International, the subject facility of Permit No. 1042-1736, has not taken any animals under its permit. Draft EA at 1.2. In addition, APHIS and former employees have not issued reports and submitted comments critical of the fitness of Mystic Aquarium and Institute for Exploration, the subject facility of NMFS Permit No. 10028, to care for marine mammals, nor did APHIS recommend denial of its permit. *See id.*

<sup>10</sup> As will be addressed in detail below, because NMFS's Programmatic EIS for the Marine Mammal Health and Stranding Response Program only analyzes the environmental impacts of releasing rehabilitated animals, and does not address the permanent retention of the animals by public display facilities, NMFS cannot rely on this document for this permitting action.

minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

Despite the fact that the IMMS permit application is uniquely concerning in its targeting of exclusively young, healthy and releasable animals, by citing two prior permits in which retention of releasable animals was a possibility NMFS has clearly established that it would be setting a new policy by granting the IMMS permit, under which the stranding networks would act as agents of capture for public display facilities. This new policy represents a significant departure from statutory and regulatory requirements mandating that animals deemed releasable be released into the wild. *See* 16 U.S.C. § 1379(h)(3); 50 C.F.R. § 216.27(a).

As a result of this policy shift, NMFS must consider the cumulative impacts of this action together with the impacts of further permit applications for retention of healthy releasable marine mammals. For example, NMFS’s approval of the retention of rehabilitated animals by several public display facilities may impact marine mammal populations because animals typically cannot be released into the wild once reduced to captivity. 50 C.F.R. §216.36(e). In the Draft EA, NMFS notes that “other marine mammal public display facilities may explore the option of receiving a similar permit.” Draft EA at 4.7. However, NMFS fails to engage in any comprehensive analysis of the impacts of issuance of several permits for permanent retention of releasable animals. NEPA does not permit the agency to segment its analysis of the environmental impacts of a policy shift to allow permanent retention of healthy and releasable marine mammals into individual permit actions. 40 C.F.R. § 1508.27(b)(7). Thus, NMFS must prepare an EIS in order to adequately study potential cumulative impacts of a policy allowing retention of releasable animals.

#### D. The Proposed Action Represents a Substantial Public Controversy

In determining whether an action is significant, CEQ regulations also require an agency to consider “[t]he degree to which the effects. . . are likely to be highly controversial.” 40 C.F.R. § 1508.27(b)(4). “Controversial” is “a substantial dispute [about] the size, nature or effect of the major Federal action.” *Blue Mountains Diversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (citations omitted). A substantial dispute exists when evidence, raised prior to the preparation of an EIS or FONSI casts serious doubt upon the reasonableness of an agency’s conclusions. *Protect Our Water v. Flowers*, 377 F. Supp.2d 844, 861 (E.D. Cal. 2004). “[A]n outpouring of public protest” has been held to satisfy the requirement of “substantial dispute.” *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1334 (9th Cir.1992). Once a substantial controversy arises, NEPA places a burden on the agency to come forward with a “well reasoned explanation” demonstrating why those responses do not suffice to create a public controversy. *LaFlamme*, 852 F.2d at 401.

Here, substantial public controversy exists such that NMFS must prepare an EIS. NMFS received an outpouring of protest during the original public comment period on the permit application from animal welfare organizations, scientists, and federal agencies alike.

- Numerous animal welfare organizations recommended denial of the permit, highlighting the fact that granting the permit would conflict with the MMPA and NMFS’s regulations regarding the release, non-releasability and disposition of stranded animals. *See e.g.*, Letter from HSUS, Letter from Animal Welfare Institute; Letter from Cetacean Society International.
- APHIS also recommended denial of the permit. Specifically, APHIS noted it works “to help place all marine mammals deemed nonreleasable” and that, contrary to IMMS’s assertions in its permit application, APHIS is “unaware of any such animals having to be euthanized because the industry would not undertake humanitarian efforts to accept and care for these animals.” Letter from APHIS. APHIS concluded that “there appears to be no medical, behavioral, or scientific reason to keep these animals from returning to their own environment.” *Id.*
- The Marine Mammal Center, a member of the NOAA Marine Mammal Stranding Response Program, also recommended denial of the permit. The comments express the organization’s concerns that not only had IMMS made several misrepresentations in its permit application, but “the premise of the applicant’s permit application suggests a purpose for our work that is distinctly different than what was intended, by the federal government. . . [and that their] intent is to bring animals in that need our care, rehabilitate them and return healthy animals to the ocean. For those that cannot be released, there is a well established process through the NMFS for vetting potential receiving institutions and placing these animals where they can receive appropriate long-term care.” Letter from Marine Mammal Center.
- In addition, numerous prior employees of Dr. Solangi—the President and CEO of IMMS and the responsible party under the Draft EA—submitted comments documenting the neglect animals experience under Dr. Solangi’s care. *See e.g.*, Email from Laura J. Bottoro.

These are but a few of the comments that cast serious doubt as to the reasonableness of the proposed action. Such an outpouring of protest as to the effects of this proposed action triggers the necessity of an EIS.

Further, as noted in Section C above, the nature, size and effect of the proposed action cannot be considered limited to this individual permit application, given evidence of NMFS’ policy shift to allowing permanent retention of healthy and releasable animals. As such, the effects of the action are highly controversial in precisely the manner described by the CEQ regulations, 40 C.F.R. § 1508.27(b)(4), and an EIS should be prepared.

### **III. NMFS’s Draft EA is Inadequate**

In addition to the fact that NMFS is in violation of NEPA by not preparing an EIS in this instance, the Draft EA also runs afoul of NEPA because it fails to properly define the

purpose and need of the project and fails to adequately consider and analyze a reasonable range of alternatives to and the cumulative effects of the proposed action. These inadequacies make it impossible for the Draft EA to satisfy the legal requirement to provide a “convincing statement of reasons why” the potential effects are insignificant. *The Steamboaters v. F.E.R.C.*, 759 F.2d 1382, 1393 (9th Cir. 1985).

#### A. NMFS Failed to Properly Define the Purpose and Need of the Proposed Action

NEPA’s implementing regulations provide that an environmental document should specify the underlying purpose and need to which the agency is responding in proposing the alternative including the proposed action. 40 C.F.R. § 1502.13. This purpose and need inquiry is crucial for a sufficient environmental analysis because “[t]he stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives.” *Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997). Thus, “an agency cannot define its objectives in unreasonably narrow terms” without violating NEPA. *Id.*; *see also* 40 C.F.R. § 1502.5 (analysis must “not be used to rationalize or justify decisions already made”). Accordingly, an agency must exercise independent judgment in defining the purpose and need of a project and cannot rely exclusively on the statements and opinions of the applicant. *See Simmons v. Untied States Army Corps of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997) (“an agency cannot restrict its analysis to those alternative means by which a particular applicant can reach his goals. . . [an agency] has the duty under NEPA to exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project”).

The statement of purpose and need in NMFS’s Draft EA is entirely inadequate. Instead of exercising its own independent judgment as to the reasons for the proposal, NMFS repeats IMMS’s definition of the purpose and need as the authorization of the “acquisition of releasable rehabilitated California sea lions.” Draft EA at 1.1. Adopting such an unreasonably narrow purpose and need rigs the analysis in the applicant’s favor because NMFS necessarily considered an unreasonably narrow range of reasonable alternatives. Moreover, it suggests that NMFS defined the purpose and need in such a manner in order to rationalize its pre-determined decision to grant IMMS’s permit. In other words, such a narrow definition of purpose and need leaves the preferred alternative—granting the permit—as the only method for achieving IMMS’s stated goals. As the federal agency charged with ensuring the protection of marine mammals, NMFS instead should have focused its purpose and need inquiry on objectives that comport with its duties under the MMPA, rather than on the interests of IMMS. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (observing that “agencies must look hard at the factors relevant to the definition of purpose,” including the views of Congress in authorizing the agency to act, and define goals accordingly).

## B. NMFS Failed to Consider an Adequate Range of Reasonable Alternatives

NEPA also requires a “detailed statement” of “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(c). The CEQ describes the alternatives requirement as the “heart” of the environmental analysis. 40 C.F.R. § 1502.14. The purpose of this section is “to insist that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means.” *Environmental Defense Fund v. Corps of Engineers*, 492 F.2d 1123, 1135 (5th Cir. 1974).

In the alternatives analysis, the agency must “provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9. The analysis should address “the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for the choice among options by the decisionmaker and the public” and must “rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. While an agency is not obliged to consider every alternative to every aspect of a proposed action, reviewing courts have insisted that the agency “consider such alternatives to the proposed action as may partially or completely meet the proposals goal.” *Nat. Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 93 (2d Cir. 1975).

Here, NMFS has failed to “rigorously explore” and “objectively evaluate” all reasonable alternatives to the project. In its Draft EA, NMFS considers only two options: (1) the no action alternative (denying the permit), and (2) the preferred alternative (granting the permit with standard conditions). This is by no means a rigorous exploration of alternatives. For example, NMFS failed to consider an alternative that would approve the permit for the acquisition of animals who do not fit the specific criteria outlined by IMMS, nor did NMFS consider the imposition of additional permit conditions in order to help ensure the animals are treated in a humane manner.<sup>11</sup>

Moreover, in its comments expressing significant concerns about the permit application, the Marine Mammal Commission specifically recommended that NMFS impose a number of conditions and confirm multiple facts were it to issue the permit. *See* Letter from Marine Mammal Commission at 1–2 (suggesting that NMFS first “require that the applicant obtain non-releasable sea lions”; “require a reasonable (e.g., one-year) waiting period from the date of permit issuance to see if suitable, non-releasable animals become available”; “consult with [APHIS] to ensure the applicant’s plans and facilities for transport and maintenance of the requested animals. . . are adequate to provide for their health and well-being”). However, NMFS has not considered these recommendations as alternatives. Such

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<sup>11</sup> Although NMFS does not have sole jurisdiction over captive marine mammals, CEQ regulations require that NMFS consider “reasonable alternatives not within [its] jurisdiction.” 40 C.F.R. 1502.14(c).

alternatives would still meet the goals of IMMS's proposal because it would still receive sea lions for its public display facility, and thus are alternatives NMFS should have considered under NEPA.<sup>12</sup>

Moreover, NMFS's analysis of each alternative is inadequate. For example, in the discussion of the preferred alternative, while NMFS recognizes that the permitted action "should be considered similar to a take from the wild", Draft EA at 4.2, the agency fails to evaluate the impacts to wild marine mammal populations and the marine environment if stranding networks no longer release releasable animals, but instead transfer them to public display facilities, contrary to the laws governing the careful and limited circumstances under which capture of healthy animals from the wild is allowed. *See e.g.*, 16 U.S.C. §§ 1374(b); 1373; 50 C.F.R. §§ 216.1–216.279.

In addition, the Draft EA mentions the possible financial benefit to the applicant of granting the permit, Draft EA at 3.1, but does not analyze the corresponding economic costs imposed upon stranding networks. Stranding networks invest significant staff and financial resources toward the rehabilitation of young stranded animals, with the expectation that animals will be released back to the wild. To require them to transfer this "investment" to a facility for purposes of public display who they have worked to return to the wild, is anathema to the purpose of stranding networks and their use of their limited resources. NMFS would be well-advised to consider such adverse impacts to stranding networks and their staff.

Finally, in its discussion of the preferred alternative, NMFS states that the action would have "minimal adverse effects" on the subject animals. These statements, however, contradict evidence in the record that Dr. Solangi has a history of neglecting the animals under his care. *See* Section II.A.iii (citing public comments documenting abuses of animals under Dr. Solangi's care). It also contradicts the fact that the animals would be released to the wild "but for" IMMS' request. NMFS's alternatives analysis hardly amounts to a "rigorous explanation" and "objective evaluation" of all reasonable alternatives and thus fails to satisfy NEPA.

### C. NMFS Failed to Adequately Consider the Cumulative Impacts of the Proposed Action

NEPA requires a cumulative impacts analysis in which the agency considers the environmental impact that "results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7. An

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<sup>12</sup> The limited consideration of reasonable alternatives highlights NMFS's arbitrary and capricious description of the purpose and need of the action. By adopting the purpose and need for the action as that defined by the applicant, NMFS precludes the consideration of reasonable alternatives because it would be too difficult for such alternatives to fully or partially comply with the goals of the proposal.



agency cannot avoid significance “by terming an action temporary or by breaking it down into small component parts.” *Id* at § 1508.27(b)(7).

As NMFS states in its Draft EA, if granted, IMMS’s permit will be the third permit NMFS has issued authorizing the take of releasable animals for purposes of public display. NMFS also recognizes the potential exists that “other marine mammal public display facilities may explore the option of receiving a similar permit.” Draft EA at 4.7. However, NMFS dismisses this recognition in the next sentence, stating that “each permit application received is evaluated on its own merits relative to the criteria established in the MMPA and NMFS’ implementing regulations.” *Id*. This incremental environmental analysis, occurring here on a permit-by-permit basis, is exactly what NEPA seeks to guard against. *See Florida Wildlife Federation v. United States Army Corps of Eng’rs*, 401 F.Supp.2d 1298 (holding that the agency failed to take a “hard look” at the cumulative effects of the proposed action in its EA when it limited the scope of its analysis to the first phase of a project). To satisfy NEPA, NMFS must not only catalogue past, present and future projects but also *assess* the cumulative environmental impacts of those projects with the proposed project and *analyze* the additive cumulative impact of all these actions. *See City of Carmel-By-The-Sea*, 123 F.3d at 1160 (rejecting cumulative impacts analysis that referred generally to other past projects and did not discuss the additive impacts of foreseeable future projects).

By proposing to and issuing permits authorizing the retention of healthy, releasable animals for public display purposes, NMFS is creating new policy, piecemeal. While such permitting actions independently may have insignificant impacts on the environment, they may have significant environmental impacts in the aggregate. NMFS cannot evade its NEPA requirements by analyzing the impacts on a permit-by-permit basis. Rather, NMFS must assess the cumulative impacts of each permitting action and its new policy to allow such permits in contravention of the MMPA and its implementing regulations that mandate that rehabilitated, releasable animals must be released back into the wild. Such an assessment must consider impacts of such actions in the aggregate. The Draft EA fails to do so.

#### **IV. NMFS’s Draft EA Conflicts with the Agency’s Prior Programmatic EIS for the Stranding Response Program, Which Does Not Address Effects of Permanent Retention of Releasable Animals for Purposes of Public Display**

As discussed above, NEPA requires that any agency contemplating a “major Federal action[ ] significantly affecting the quality of the human environment” conduct a detailed analysis of the proposed action’s environmental effects. 42 U.S.C. § 4332(2)(C). If, after the agency completes the original EIS, “[t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts”, the agency must issue a Supplemental Impact Statement. 40 C.F.R. § 1502.9(c). If changes or new circumstances arise suggesting that a

Supplemental EIS may be required, the agency must conduct a Supplemental Information Report (SIR). *See Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 555 (9th Cir.2000). To satisfy NEPA, an SIR must take a “hard look” at whether the changes or new circumstances will significantly differ from those discussed in the original EIS. *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 374 (1989); *see also Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 555 (9th Cir.2000) (SIRs are “formal instruments for documenting whether new information is sufficiently significant” to require a supplemental EIS.). The change need not be strictly environmental, however; the test is whether the change or new information so alters the project's character that a new “hard-look” at the *environmental consequences* is necessary. *Louisiana Wildlife Federation, Inc. v. York*, 761 F.2d 1044, 1051 (5th Cir. 1985).

Here, NMFS’s approval of the permit would constitute a significant departure from the environmental analysis contain in the Programmatic Environmental Impact Statement (PEIS) on the Marine Mammal Health and Stranding Response Program. Under both the status quo option and the preferred alternative in the PEIS, “animals deemed releasable after rehabilitation would be returned to the wild...” NMFS, *Final Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program* at 4.23 (Feb. 2009) (hereinafter PEIS). The Marine Mammal Stranding Agreement between NMFS and the stranding organizations which stranding networks must sign in order to obtain authorization from NMFS to respond to stranded animals, also states that they “may take live stranded marine mammals in a humane manner with the *goal of rehabilitation and release.*” PEIS, Appndx. C (emphasis added). This agreement also reiterates NMFS’s regulations, stating that “any marine mammal eligible for release *must be released* as early as possible and no later than 6 months after being taken for rehabilitation unless the attending veterinarian determines that: the marine mammal might adversely affect marine mammals in the wild; release is unlikely to be successful due to the physical condition and behavior of the marine mammal; or more time is needed.” *Id.* (emphasis added); *see* 50 C.F.R. § 216.27. As such, the environmental analysis in the PEIS studied only the impacts from releasing releasable animals.

NMFS’s apparent policy change, under which it will approve the retention of healthy, releasable animals by public display facilities, contradicts the MMPA, its own regulations, its agreement with Stranding Networks, and its previous PEIS on the stranding program. This departure represents a substantial change in the action of stranding networks such that NMFS is required to take a “hard look” at whether the changes or new circumstances will significantly differ from those discussed in the original PEIS. 40 C.F.R. § 1502.9(c). The authorization of the acquisition of releasable marine mammals may have effects on populations of marine mammals in the wild such that a supplemental PEIS is required. At the very least, NMFS cannot approve a permit by relying on an EA that directly conflicts with a prior EIS. Thus, if NMFS were to grant this permit, it must prepare an SIR and likely a supplemental PEIS.

## V. Conclusion

Granting IMMS the requested permit would violate the law, contravene NMFS' current agreements with stranding networks, and conflict with the findings and requirements set forth in NMFS' previous PEIS on the stranding program. Were NMFS to grant the permit, it would not only significantly undermine the work of stranding networks, but it would contravene the MMPA and its implementing regulations. Further, based on the substantial record evidence of IMMS' lack of credibility and competency to care for marine mammals in its possession, granting the permit would be imprudent, arbitrary and capricious, and an abuse of the agency's discretion. Therefore, HSUS urges NMFS to adopt the no action alternative and deny IMMS's permit.

If NMFS chooses to abdicate its statutory obligations and grant the permit, it must issue an EIS in advance of doing so because the Draft EA on the proposed action fails to satisfy the legal requirements of NEPA and substantial questions as to the environmental impacts of the proposed action exist.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Monsell', is positioned above the typed name.

Kristen Monsell, Esq.  
Litigation Fellow  
Animal Protection Litigation  
The Humane Society of the United States  
2100 L St. NW  
Washington, DC 20037



Chief, Permits, Conservation and Education Division,  
Office of Protected Resources, NMFS  
1315 East-West Highway,  
Room 13705,  
Silver Spring, MD 20910

Sent via email to: [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov).

Re: File No. 15537

Please find below comments from the International Fund for Animal Welfare (IFAW) on File: 15537 regarding the application of Dr. Moby Solangi of the Institute for Marine Mammal Studies (IMMS) in Gulfport MS for a permit to acquire releasable stranded California sea lions for the purpose of public display.

IFAW is an international animal welfare organization with a reputable stranding network in good standing with NOAA Fisheries. As such, we strongly oppose the permit application from the Institute for Marine Mammal Studies (File No. 15537: Acquisition of releasable stranded California sea lions for the purpose of public display.) Although we do not respond to the rescue of California sea lions specifically, we believe that this proposal is the antithesis of all that stranding networks strive to achieve.

At IFAW, we value individual animals, populations, entire species, and their habitats. We believe that whenever possible, it is best for wild animals to be released back to their natural environment. Whenever possible (based on resource needs and human and animal safety), stranded marine mammals that are deemed healthy enough are immediately released into safe habitat. Those animals that require more extensive medical care may be placed in an approved rehabilitation facility. The IFAW Marine Mammal Rescue and Research team (MMRR) places animals into rehabilitation only after thorough examination and thoughtful consideration regarding what is best for the welfare of that individual animal, as well as the population. When we place a dolphin, porpoise, whale or seal into rehabilitation, it is with the expectation that if or when the animal is healthy, and deemed releasable, it will be released into the wild.

The application from Dr. Solangi at IMMS is in direct conflict with this most fundamental goal in stranding response. Beyond the effort invested in each animal is the expense of response and rehabilitation. These costs are undertaken by stranding networks with the understanding that we are all working toward the same goal if releasing healthy animals back to the wild. Furthermore, it is inconceivable that Dr. Solangi is requesting that NOAA Fisheries “authorize and instruct the

different stranding facilities to cooperate with [IMMS]”. Given the goals of the Marine Mammal Health and Stranding Response Program (MMHSRP) and most individual stranding network organizations, including IFAW, instructing a facility to relinquish a releasable animal into a permanent captivity situation is asking them to act in complete contradiction to their mission and that of the MMHSRP. IMMS openly states that “the sea lions may be involved in any and all authorized uses under the NMFS and USDA public display regulations. They will definitely be used in educational presentations to the general public, meet-and-greet type scenarios – such as posing for photos with guests, shaking hands/flippers with guests, and other educational activities. We do not expect to use them in a “swim-with-the-sealion- program” at this time.” While IFAW MMRR recognizes the value of public education in conservation efforts, this CANNOT be done at the expense of the animals we strive to protect. Each of the activities listed above is not only in contradiction with the acceptable quality of life for an animal in captivity, it is also completely offensive. One can establish incredibly effective educational programs with non-releasable animals, and without these types of activities.

In essence, if this permit is approved, stranding networks will potentially be serving as capture agents to secure animals for permanent captivity purely for the economic gain of one individual institution. Though couched in the appropriate language regarding conservation through public education, the bottom line is that this permit is about the financial gain and business plan of Dr. Solangi and IMMS.

The National Marine Fisheries Service has established clear goals within the MMHSRP, accompanied by Policies and Best Practices for Marine Mammal Stranding Response. Within each of our Stranding Agreements, it is clearly stated that healthy, releasable animals must be released within six months of being taken into rehabilitation. There is no reason for NOAA Fisheries to consider granting this permit which so clearly conflicts with the fundamental basis of this entire program and the carefully crafted MMHSRP, Policies and Best Practices, and Stranding Agreements.

In addition to the objections noted above, there is also a technical shortcoming in this application. The NEPA analysis should have been completed prior to issuing the notice of the permit request being available for comment. Procedures are in place to ensure equal opportunity for all parties involved. Everyone must be held to the same standard to maintain this equity.

Sincerely,



Jeff Flocken  
DC Office Director  
International Fund for Animal Welfare  
1350 Connecticut Avenue, Suite 1220  
Washington, DC 20036



May 11, 2011

Chief, Permits, Conservation and Education Division  
Office of Protected Resources, NMFS  
1315 East-West Highway, Room 13705  
Silver Spring, MD 20910

Sent via e-mail to: [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov)

RE: File 15537

**COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT  
WRITTEN IN RESPONSE TO THE PERMIT APPLICATION OF IMMS**

The Marine Mammal Center (TMMC), in Sausalito, California, rescues, rehabilitates and releases back to the ocean hundreds of marine mammal patients each year. Based on that core work, TMMC also engages in scientific research and leads school and other public education programs on marine mammals and the ocean environment that we share with them.

Having cared for more than 16,000 patients in 36 years of operation, the Center has a great depth of experience in marine mammal clinical medicine and through its clinical staff has advanced the science behind the care of those animals. The research that TMMC conducts with its partners in the scientific community has illuminated our understanding of domoic acid toxicosis, cancer, and infectious diseases such as leptospirosis in these species. We have contributed to the understanding of marine mammal population health, and by extension, ocean health. On several fronts, our collaborations have led us to direct applications of our research to contemporary issues in human health.

Started by volunteers in 1975, TMMC continues to operate thanks to the generous provision of over 100,000 volunteer hours each year. Volunteers come from all walks of life and represent diverse age groups. Trained volunteers are, in fact, our first responders when a potential patient is reported.

It is with our substantial experience operating as a rehabilitation facility, in the context of our strong contributions to the science of marine mammal health, and from a community that is volunteer driven, inspired and supported, that we offer the following comments on the draft EA written in response to the permit application of the Institute of Marine Mammal Studies (IMMS) in Gulfport, Mississippi.

The National Marine Fisheries Service has a proven regulatory process in place through which interested parties can source rehabilitated non-releasable marine mammals for public display.

- While our goal is to rehabilitate our marine mammal patients and release them to the wild, a fraction of our patients are deemed non-releasable by our veterinary staff due to chronic non-life threatening health concerns, habituation or other factors. In such cases, TMMC makes the

**2000 Bunker Road – Fort Cronkhite · Sausalito, CA 94965 - Tel. 415.289.SEAL · Fax 415.289.7333 · TMMC.org**

Monterey Bay – PO Box 778 – Moss Landing, CA 95039 – T 831.633.6298 – F 831.633.5927  
San Luis Obispo – 1385 Main Street – Morro Bay, CA, 93442 – T 805.771.8300 – F 805.771.8304  
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NMFS aware and supports that agency's efforts to identify appropriate long-term care – most often in an accredited zoo or aquarium.

- In TMMC's 36 years of operation, 74 non-releasable animals have been placed through this process. Of that total, 60 have been California sea lions.
- On May 3<sup>rd</sup>, 2011, two non-releasable, blind California sea lions were placed at the San Francisco Zoo. One of these sea lions came into TMMC's care after having suffered a gunshot wound to the head and face. The other came into TMMC's care from the Northcoast Marine Mammal Center in Crescent City, California. These animals are adapting well in their new facility, and the staff of the San Francisco Zoo is developing educational and interpretive programs to increase the public's awareness of marine mammals, the threats they face and cooperative partnerships that exist to care for them.
- A system is in place through which parties interested in displaying marine mammals can source non-releasable animals for display. This system works well. IMMS has the ability, as does any other interested facility, to work with NMFS to acquire such animals.
- In 2009, 640 California sea lion pups stranded in Northern and Central California (this was a substantial increase over the prior years' average of about 70 pups). A large number of these animals were non-releasable, and TMMC worked with the NMFS to identify suitable facilities for placement. A number of facilities stepped forward, but to our knowledge IMMS was not among them.

Issuance of this permit will negatively impact the TMMC workforce and donor base.

- More than 800 people volunteer for TMMC. These volunteers are TMMC's first responders over our 600 mile rescue range. They provide immediate care for our patients, are trained to effectively act as nurses for the animals' care and together work shifts that sometimes stretch to 24-hour coverage, seven days a week, 365 days per year. They are a dedicated and passionate corps of individuals without whom our program would not exist.
- While motivations for volunteering vary, there is no question in my mind that the hope of every volunteer for each and every patient we treat is that that animal will be returned to health and ultimately to its ocean home.
- Volunteers understand the policies of TMMC and our permitting under the NMFS. They know that when patients are not releasable, there is a process by which those animals may be placed. Our volunteer community is diverse, however, and the views they hold around public display of marine mammals are diverse, and sometime diametrically opposed.
- To allow the acquisition of healthy, releasable sea lions from our care would be seen by many of our volunteers (and staff and volunteer board of directors) as fundamentally inconsistent with our mission. For some, it would make their volunteer work unpalatable. Accordingly, we ask that you give due consideration to the negative impact on our volunteer workforce of a decision to grant this permit.
- TMMC also enjoys strong financial support from individuals, corporations and foundations; this support comprises 80% of the Center's operating budget. (While permitted by the federal government, TMMC is not federally supported for our on-going operational expenses.) These donors support TMMC's mission, including its philosophy that releasable animals will be returned to their home in the wild and only non-releasable animals will be placed in display facilities. Therefore we ask that you also give due consideration to the economic impact on TMMC of the proposed placement of otherwise releasable animals in a display facility.

**2000 Bunker Road – Fort Cronkhite · Sausalito, CA 94965 - Tel. 415.289.SEAL · Fax 415.289.7333 · TMMC.org**

Monterey Bay – PO Box 778 – Moss Landing, CA 95039 – T 831.633.6298 – F 831.633.5927  
San Luis Obispo – 1385 Main Street – Morro Bay, CA, 93442 – T 805.771.8300 – F 805.771.8304  
Anchor Bay-Fort Bragg – T 415.289.SEAL

The proposed permit is not in accord with the Final Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program.

- The Office of Protected Resources, the rehabilitation community and the public participated in an exhaustive process determining policies under the Marine Mammal health and Stranding Response Program (MMHSRP) under Title IV of the MMPA. The PEIS was issued in February 2009 and a Record of Decision adopting certain policies was issued on April 21, 2009. Participants in that discussion considered various alternatives with respect to releasable animals and specifically rejected the placement of such animals in public display facilities.

The proposed permit could have other unintended negative consequences.

- Many marine mammal rehabilitation facilities are smaller than TMMC, and struggle to maintain their financial health. If this permit is issued, it is conceivable that other display facilities will seek healthy, releasable animals and offer financial compensation to those struggling rehabilitation centers. However those financial arrangements might be structured, they would amount to the purchase of marine mammals. The creation of a market for and trade in protected species is fundamentally inconsistent with federal policy.

Conclusion

We encourage you to take account of the potential negative impacts on TMMC (as well as other marine mammal rehabilitation centers) with respect to both volunteer and donor support, as well as to consider whether the proposed permit is consistent with federal policy concerning protected species.

Sincerely,



Jeff Boehm  
Executive Director  
The Marine Mammal Center





Mr. P. Michael Payne, Chief  
Permits, Conservation and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway, Room 13705  
Silver Spring, MD 20910

May 4, 2011

RE: National Marine Fisheries Service's request for comments on the draft environmental assessment prepared in response to the Institute for Marine Mammal Studies public display permit application (File No. 15537)

Dear Mr. Payne,

On behalf of the more than 70,000 supporters of WDCS, the Whale and Dolphin Conservation Society, I am writing in response to The National Marine Fisheries Service (NMFS) request for comments on the Environmental Assessment (EA) prepared in response to a public display permit application received from the Institute for Marine Mammal Studies (IMMS) [FR Doc. 2011-8576].

As stated in our previous comments submitted to NMFS in 2010, WDCS continues to strongly oppose the March 5, 2010 Application for a Permit for Public Display Under the Marine Mammal Protection Act (MMPA)(FR Doc 2010-12123) as we do not believe the permit application nor the process under which is being considered are consistent with the requirements of the National Environmental Policy Act (NEPA) or the Marine Mammal Protection Act(MMPA).

According to section 1.1.1 of the EA, NMFS acknowledges that NEPA requires a determination of whether an EA, Environmental Impact Statement (EIS) or Categorical Exemption (CE) is appropriate prior to publishing the permit application for comment in the Federal Register. Although the EA, states NMFS "initially" determined an EA was needed, it made no such indication in its original FR notice when the permit application was initially published (FR Doc 2010-12123). As such, we believe this is a violation of NEPA requirements.

Additionally, we do not believe the EA adequately addresses economic impacts, specifically the impacts to the stranding networks responsible for the collection and rehabilitation of the animals that the applicant has requested be turned over to him. While some stranding networks may receive federal funding through the competitive Prescott Grant program, most, if not all, stranding response organizations rely on private funding

**Whale and Dolphin Conservation Society**

7 Nelson Street, Plymouth, MA 02360-4044

[www.wdcs-na.org](http://www.wdcs-na.org) email: [info@whales.org](mailto:info@whales.org) Tel: 508 746-2522

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and volunteer resources in order to operate. The EA does not consider the financial burdens of the rehabilitation facilities, nor any potential impacts if funders or volunteers reduce support because releasable animals are being held for captive display, rather than being released back into the wild. Further, the EA does not consider the conflicts that may arise when organizations that, as part of their mission, oppose captivity, are required to turn over healthy, releasable animals for public display. The EA must consider how these stranding facilities may be financially or organizationally impacted.

Lastly, and most importantly, we reiterate our comments regarding the permit application indicating that we believe this request is a direct violation of 50 CFR 216.27. The intent of the relevant implementing regulations regarding the disposition of rehabilitated animals is clearly to ensure that marine mammals taken into rehabilitation facilities are released back into the wild within six months or retention, *unless the attending veterinarian determines that: (i) The marine mammal might adversely affect marine mammals in the **wild**; (ii) Release of the marine mammal to the **wild** will not likely be successful given the physical condition and behavior of the marine mammal; or (iii) More time is needed to determine whether the release of the marine mammal to the **wild** will likely be successful* (emphasis added). The applicant is specifically requesting healthy animals that can be released into wild and, therefore, the intent of this regulation is not being met and would undermine existing agency regulations and policy set forth in the Programmatic Environmental Impact Statement (PEIS) on the Marine Mammal Stranding and Health Response Program that the NMFS issued in final form in 2009. In fact, granting this permit would directly contradict the guidance and agreements set forth to stranding networks in this PEIS which would need to be supplemented as a result of considering this change in policy.

In summary, we do not believe that EA was issued appropriately, that it adequately addresses impacts or considers the intent 50 CFR 216.27, which is to release healthy animals back into the wild.

Because of this, we believe that NMFS must deny this permit.

Sincerely,

A handwritten signature in black ink that reads "Regina Asmutis-Silvia".

Regina Asmutis-Silvia  
Senior Biologist  
[Regina.asmutis-silvia@wdcs.org](mailto:Regina.asmutis-silvia@wdcs.org)

**Whale and Dolphin Conservation Society**

7 Nelson Street, Plymouth, MA 02360-4044  
[www.wdcs-na.org](http://www.wdcs-na.org) email: [info@whales.org](mailto:info@whales.org) Tel: 508 746-2522

WDCS is a registered 503(c) charity

April 28, 2011

Mr. P. Michael Payne, Chief  
Permits, Conservation and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway, Room 13705  
Silver Spring, MD 20910

Dear Mr. Payne,

**RE: The National Marine Fisheries Service's request for comments on the draft environmental assessment prepared in response to the Institute for Marine Mammal Studies public display permit application (File No. 15537)**

The World Society for the Protection of Animals (WSPA) submits the following comments in response to the above-referenced request made by the National Marine Fisheries Service (NMFS) regarding the permit application submitted by the Institute for Marine Mammal Studies (IMMS) to obtain eight rehabilitated, releasable California sea lions (*Zalophus californianus*) for the purpose of public display.

**Timing of NEPA Analysis**

As indicated on page 3 of the draft environmental assessment (EA), NMFS' Office of Protected Resources determined the IMMS permit application warranted an EA under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) during the initial review process. Therefore the EA should have been completed prior to issuing a notice of the availability of the permit request for comments. According to 50 CFR § 216.33, during the initial review process the Office Director should determine whether, under NEPA, the proposed activity is excluded from preparation of an EA. Procedures outlined in 50 CFR § 216.33 were not followed by NMFS and therefore approving permit no. 15537 would be inappropriate.

**Programmatic Environmental Impact Statement**

Appendix C of the Programmatic Environmental Impact Statement (PEIS)<sup>1</sup> on the Marine Mammal Health and Stranding Response Program includes documents describing policies and best practices for marine mammal stranding response, rehabilitation and release programs.<sup>2</sup> NMFS published and implemented criteria for stranding agreements that specified animals should be evaluated for releasability and released back into their natural habitat within six months of collection if possible. The draft EA is in conflict with the PEIS.

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<sup>1</sup> Final Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program. February 2009. National Marine Fisheries Service, Office of Protected Resources  
<http://www.nmfs.noaa.gov/pr/health/eis.htm>

<sup>2</sup> Whaley, J.E., Borkowski, R., & NOAA National Marine Fisheries Service, Marine Mammal Health and Stranding Response Program. NOAA National Marine Fisheries Service Best Practices for Marine Mammal Stranding Response, Rehabilitation, and Release Documents: Standards for release.

## **Marine Mammal Health and Stranding Response Program**

IMMS is an active participant of the National Stranding Network - a component of the Marine Mammal Health and Stranding Response Program (MMHSRP). MMHSRP was never intended to support the retention of healthy, releasable animals for captive breeding and public display. Asking stranding networks to turn over custody of animals who have been rehabilitated to a point that they are healthy enough for release is equivalent to using stranding networks as agents of capture to remove marine mammals the wild, a purpose not consistent with the establishment of stranding networks to begin with.

As an active member of the National Stranding Network, IMMS should focus on the successful rehabilitation and release of stranded marine mammals, not on obtaining releasable animals from other networks for breeding and public display purposes. The applicant's intentions threaten to undermine the MMHSRP and what it intended for the role of network members i.e., ensuring the successful release of rehabilitated animals.

## **Economic Impacts**

The EA does not address potential economic impact related to time and financial resources invested by stranding networks and rehabilitation centers in caring for stranded sea lions with the intention of releasing the animals back into the wild. Granting the IMMS permit – and supplying animals for public display and generating revenue for a commercial facility – would be a misuse of the resources invested in rescue and rehabilitation. Further, it is not the responsibility of NMFS to facilitate commercial propagation of marine mammals for explicitly non-conservation purposes.

Another economic impact not addressed in the draft EA is the added expense of supporting an animal that could be released, but is instead maintained until IMMS takes the time to review and choose animals that meet their requirements for captive display.

## **Inconsistent Conservation/Education Message**

As discussed in Section 4.3.1, the Marine Mammal Protection Act (MMPA) permits the take or import of marine mammals for public display if the applicant, “offers a program for education or conservation.....” However, the value of any information disseminated through programs displaying releasable animals in captivity is highly questionable. Viewing captive marine mammals, particularly those trained to interact with humans or to perform “tricks,” give the public a false picture of the animals’ natural history, constituting a form of miseducation at the outset. Furthermore, it reinforces a dangerous public misconception that it is appropriate to physically interact with marine mammals.

Suggesting that keeping releasable wildlife captive is beneficial to individual animals (section 4.2, “animals would be provided good nutrition and high quality health/medical care, which may lengthen their life spans”) provides an extremely distorted and misleading conservation and educational message. Wild animals are adapted to the natural challenges of their environment and these rigors do not justify captivity. Falsely representing the natural environment and the role of wildlife does little to encourage respect for and protection of natural habitats and the wildlife that live there.

## **Animal Welfare and Ethics of Captivity**

Long-term care facilities may be a humane and responsible alternative to euthanasia for non-releasable marine mammals. However, permanently confining healthy, releasable animals in order to generate revenue or for entertainment purposes is a serious ethical issue that should be considered, especially when reviewing potential detrimental effects of issuing the permit. Section 4.2 states that “there would be minimal adverse affects on the subject animals....i.e., permanent retention in captivity,” however the transport process, physical handling, forced interactions with humans, and a drastically limited social and physical environment most certainly adversely impacts the individual animals involved. The handling and permanent confinement of wild marine mammals is not only inhumane, but can also cause high levels of stress, which can severely compromise the health of those animals involved.<sup>3</sup>

## **Conclusion**

We strongly urge NMFS to consider the comments above regarding the draft EA as well as deny IMMS’ permit application (File No. 15537). Thank you for the opportunity to share our concerns and comments concerning this issue.

Sincerely,



Karen Vale  
U.S. Programs Jr. Manager  
World Society for the Protection of Animals

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<sup>3</sup> WSPA & HSUS. 2009. The Case Against Marine Mammals in Captivity. 76 pp.

Robert J. Wilson  
Address redacted

May 11, 2011

Chief Permits, Conservation and Education Fisheries  
Office of Protected Resources  
NOAA Fisheries (F/PR1)  
1315 East-West Highway  
Silver Spring MD 20910-3226

Sent via email: NFMS.PR1Comments @ Noaa.gov

Re: IMMS permit (File No. 15537)

I have been involved in marine mammal rescue and rehabilitation for many years. I have participated in MMPA amendments and regulatory issues. But, this current effort to transfer rescued but releasable animals to public display facilities is clearly misguided and contrary to the principles of the MMPA. The proposed permit is contrary to regulatory and statutory requirements but more importantly is just plain bad public policy.

Current regulations do not allow for transfer of rehabilitated releasable animals for public display.

50 C.F.R. § 216.27(a)(1) states (in part): “Any marine mammal held for rehabilitation **must** be released within six months of capture...” (emphasis supplied). There are three exceptions (subsections (a)(1) (I, ii, iii). None of those exceptions provide for a “take” for public display. The procedure provides that the NMFS may take other action including at section 216.27 (a) (3) (iv) “Require other disposition of the marine mammal.” 216.27(c) is entitled “Disposition for a special exception purpose”. In subsection (c)(1) it states that the disposition can be authorized under subpart D. However, Section 216.43 under Subpart D entitled “Public display” is {Reserved}. Thus, there are no current regulations providing for a special exception to take a releasable animal and allowing it to be taken for public display. There is however, specific regulatory authority to allow a **non-releasable** animal to be placed in a public display facility. See §216.27 (b)(4) and (5). Thus, there is no regulatory authority to order the transfer of a releasable animal to a facility for public display.

The proposed permit is not in accord with the Final Programmatic Environmental Impact Statement for the Marine Mammal health and Stranding Response Program.

The Office of Protected Resources, the rehabilitation community and the public went through a very extended process determining policies under the Marine Mammal health and Stranding Response Program (MMHSRP) under Title IV of

the MMPA. The PEIS was issued in February 2009 and a Record of Decision adopting certain policies was issued on April 21, 2009. Various alternatives regarding releasable animals were discussed and requiring placement of releasable animals in public display facilities was specifically rejected. See Section 2.2.4 at p. 2-16. I am aware of two recent permit actions by your office that seem to allow transfer of releaseable animals for public display. Your office was wrong in issuing those two permits. Two wrongs do not make a right. This proposed new policy goes against almost 40 years of sound marine mammal policy. California sea lions reproduce well in captivity. There is absolutely no need to take one from the wild.

Section 3.3 of the draft EA regarding the Biological Environment is deficient

The brief two paragraphs of the draft EA on the biological environment are woefully inadequate. It merely cites some general averages from the California sea lion stock assessment. It cites a growth rate of 6.52 % allegedly corrected for El Nino years. However, this average fails to account for the wide swings that can occur in growth rates. In the spring of 2009, there was an unusual failure of an upwelling in the California current with unusually warm waters. This led to a mortality rate of 80% of the pups born that year. In addition, the weaned pups from 2008 stranded in unusually high numbers. From an average of 70 strandings a year in 2009, 640 pups stranded in Northern and Central California. A large number were unreleasable and The Marine Mammal Center desperately sought public display facilities to take the animals. A number stepped up to the plate. However, IMMS was not one of them.

The Draft EA, at p. 8 states: "IMMS has indicated that they have been in consultation with existing public display facilities and no animals are currently available from this source." However, they fail to state why they did not "consult" with the stranding networks that could have provided them with all their needs. They also quote IMMS as stating they will not take any blind animals. We are at a loss as to why they should not be required to take a blind animal. They do quite well in captivity and live long lives and do not require much special handling. TMMC has placed blind, and even deaf animals that are successful in public display facilities. We note from a recent AP news release that there is currently a blind animal in the rehabilitation facilitation in San Pedro that they have had difficulty placing. By allowing a facility to take a "healthy" releasable animal instead of a non-releasable animal could lead to overcrowding of rehabilitation facilities.

The draft EA in Section 3.1, Social and Economic Environment is inadequate

The Draft EA at p. 7, section 3.1 dismisses any effect on the social and economic environment as "negligible" and states: "Thus, the EA does not include any further analysis of social or economic effects of the Proposed Action." It does so even though it states: "The social and economic effects of the Proposed Action mainly involve the effects on the people involved in...the associated rehabilitation of the marine mammals..." Apparently, they are saying they do not care about

the effects or cannot imagine any impact. They are wrong. The effect of the action could destroy the entire stranding and rehabilitation network. The rescue and rehabilitation of stranded marine mammals is performed by volunteer labor and funding of those efforts is not done by the federal government but rather private funds. Does the OPC really believe that their proposed actions would have no effect on the recruitment of volunteers or solicitation of funds? Do they think that the rescue and rehabilitation of marine mammals only to be placed in a zoo or aquarium would not decrease the number of volunteers or funds? If OPC is serious in proceeding with this misguided policy and extensive and through review of the social and economic environment effects must be done.

Rescue and rehabilitation facilities make a major investment in terms of time and money to rehabilitate animals. The proposal by NMFS would take their investment and turn it over to the permittee for their financial gain. Clearly, the MMPA does not envision this result. We also notice that the proposed permit provides for a procedure whereby the permittee can get a list of releasable animals and then pick and choose and travel and "examine" their proposed animals thus leading to additional costs to the facility. The costs can be substantial. In a recent case, a person who shot a sea lion that was rehabilitated but not releasable was ordered to reimburse TMMC over \$50,000 for the costs of rescue and rehabilitation. This is a clear "taking" from the rehabilitation community. Volunteers and donors spend time and money to rehabilitate and animal only to have it seized by the federal government and given to a profit making facility. Clearly, this is not the policy envisioned by the MMPA.

In conclusion, we believe NOAA Fisheries lacks legal authority to grant the permit. Even if it felt it had the legal authority, it should not proceed without a complete EIS, not an EA. Moreover, we also believe that issuance of such a policy is bad public policy that could have grave impacts on the stranding networks and our institution in particular.

Sincerely yours;

A handwritten signature in cursive script that reads "Robert J. Wilson". The signature is written in black ink and is positioned below the typed name.

Robert J. Wilson



**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:00:23 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** M <[REDACTED]>  
**Date:** Tue, 10 May 2011 22:47:52 -0400  
**To:** NMFS.PR1Comments@noaa.gov

**Regarding:** Federal Register (75 FR 28239) that a request for a permit was received by the above-named applicant under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The applicant is requesting a permit to take releasable stranded California sea lions (two males and six females) from west coast stranding facilities for public display purposes. By this notice, NMFS requests public comment on the EA associated with this action.

**Public Comment:** I am opposed to the request to take California sea lions into captivity under most any circumstance and especially under those described in this application because it would mean more living marine mammals would be brought into the unsafe, unscrupulous hands of Moby Solangi. When he was in charge of the Marine Life Oceanarium, a for-profit entertainment center he exercised grave indifference and was not equipped to deal with threats to his animal captives during Hurricane Katrina. Why, when the tanks were a mere 30 yards away from the Gulf and he was at the limit of his resources to evacuate them in the final hours, would he not release Gulf dolphins back to their home instead of leaving them to their fate? Whether he was merely hoping, callously, that his living investment would maintain their value or whether he actually cared for their lives, abandoning the animals demonstrated the inability to provide humane care and treatment of animals during transport and while in captivity required by the Animal Welfare Act.

In addition, his treatment of animals going back over 25 years includes selling and "renting" dolphins out to various entities for entertainment and profit. Many of those animals died prematurely and that is in the record. Mr. Solangi's direct quote includes a reference to the fact that dolphins, who live with their one family for many years (if not all of their entire life) stated that *"Change is always good. We all like to go places. You keep them in the same house it gets old. By moving them around, mixing them around, changing them to where they are compatible, I think it is very healthy for them. That's what we call enrichment."* ~Moby Solangi. This quote further demonstrates Mr. Solangi's complete self-serving agenda and scientific ignorance. The implicit goal of the Marine Mammal Protection Act is to protect animal populations from commercial exploitation, not to enable a multimillion dollar tourism and entertainment industry. Further, Mr. Solangi's "Institute for Marine Mammal Studies" had been promulgating half truths about the health of animal life in the Gulf without any science or data collection to back up his conjectures. There are no studies going on beyond the tank in that "institute". Any scientist worth his salt would not be such a media hound and speak without evidence to support their claims.

This man is not representative of environmental groups or scientists and has little integrity. Why does

he want these animals anyway? Aren't there enough animals to save and research to be done after the devastation of the oil spill in his own waters? Why would he need California Sea Lions? If anything the children of the Mississippi Gulf region need to connect and understand the animals of their own ecosystem, nto those flown in for entertainment from 2,400 miles away. Do not allow a taking under the MMPA for this entity.

Thank you for the opportunity to comment.

Mary Anne McNulty

[REDACTED]

**File No. 15537.eml**    **Content-Type:**    message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:00:47 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Chasity Reed <[REDACTED]>  
**Date:** Tue, 10 May 2011 21:00:53 -0700 (PDT)  
**To:** NMFS.PR1Comments@noaa.gov

To whom it may concern,

I am contacting yo in regards to case File No. 15537, IMMS, under Dr. Moby Solangi, requesting 8 releasable sea lions for public display. I have many concerns about this and wish to share them with you, if I may.

First off, I know that Solangi has stated he would look at non-releaseable sea lions as well, but prefers releasable ones. I must ask, what is the point of rescuing an animal, rehabbing it, and then when its healthy enough to go home, keep it? Are there not plenty of non-releasable animals that are killed every year due to having nowhere to go? How is it right or lawful under the animal welfare act to allow facilities to take releasable animals? If he is allowed to have any sea lions, and its my wish he isn't, releasable animals is unjust! IMMS should be about education, not show. So he should be able to use a non-releasable animal to educate the public.

Second, I truly hope you take into consideration Moby Solangi's past. He left 8 dolphins, a harbor seal, and 18 sea lions at Marine life as hurricane Katrina, a cat 5 storm, was racing through the gulf. Because of his negligence the harbor seal was never found and 5 sea lions died. This was a reckless decision on Solangi's part and these animals under his care paid the price.

Lastly, I just want to ask that you please think long and hard about allowing Moby Solangi to have these or any animals. I know he now has to dolphins in his care, and that is tragic in itself, given his past. He proved with Marine Life that he did not care for his animals. He does not make good judgment calls for THEIR well being. Animals in captivity is supposed to be about education and awareness. All Solangi is about is money. Please do not put the lives of anymore animals in his care. Look back into his past. The law suit over Moke is proof enough that he is shady and greedy. He wanted Moke for IMMS's personal gain, not Moke's best interest.

Thank you for your time. I hope you consider my concerns and the concerns of many when you make your decision.

Chasity Reed  
[REDACTED]  
[REDACTED]  
[REDACTED]

**File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Mon, 02 May 2011 10:30:27 -0400  
**To:** Jennifer.Skidmore@noaa.gov

from the PR1 Comments Line

**Subject:** File No. 15537  
**From:** John Mellquist <[REDACTED]>  
**Date:** Thu, 28 Apr 2011 17:11:02 -0700  
**To:** NMFS.PR1Comments@noaa.gov

TO: Chief, Permits, Conservation and Education Division

It is my contention that Dr. Moby Solangi's public display permit application should be denied for the following reasons. The NEPA analysis (EA) should have been done prior to issuing a notice of the availability of the permit request for comment (as NMFS acknowledges on page 3 of the EA); and therefore it was inappropriate to issue the permit in the first place.

Also, the EA does not address the fact that stranding networks have invested time and financial resources into caring for stranded sea lions with the belief that this will result in release of the animal to the wild. Instead, the issuance of the permit would betray that uncompensated investment of their time and financial resources. This economic impact is not analyzed.

Further, the applicant asks that he be provided with an ongoing list of available animals so that he may review them and select those he wishes to retain. This may require additional expense of maintaining an animal that is otherwise ready for release until the applicant can review whether or not it meets his requirements and he wishes to have it turned over to him or released. This potential economic impact is also not analyzed.

Asking that stranding networks turn over custody of animals who stranded and were rehabilitated to a point that they are healthy enough for release is little different than using stranding networks as agents of capture to remove marine mammals the wild, a purpose not consistent with the establishment of stranding networks. In 2009 NMFS issued a Programmatic Environmental Impact Statement (PEIS) on the Marine Mammal Health and Stranding Response Program that provided Policies and Best Practices for Marine Mammal Stranding Response. (available at: <http://www.nmfs.noaa.gov/pr/health/eis.htm>) At that time, NMFS also published and implemented criteria for stranding agreements that stipulated the necessity of releasing healthy, releasable animals within 6 months of being taken into a facility for rehabilitation.

The draft EA on the IMMS permit request conflicts with the PEIS. The PEIS on the stranding program never considered the possibility of retention of healthy, releasable marine mammals. Instead, NMFS appears to be trying to set a new direction of policy with this EA by approving retention of healthy animals for captive breeding and income-generating public display without analyzing the impact of the likelihood that they will be approving multiple permits to do so and thus changing their longstanding policy on which stranding networks have relied.

If approved, Dr. Solangi's project will undermine the successful stranding response programs that have taken years to develop and jeopardize the health and repatriation of sea lions to their nature environment. It must, therefore, be denied.

Sincerely,

John Mellquist

## Environmental Educator



Polystyrene foam packaging (commonly known as Styrofoam™) is a major source of beach litter, contributes to marine pollution and damages water quality. 47 municipalities in California have regulated polystyrene take-out ware!

**File No. 15537.eml**    **Content-Type:**    message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: 15537 - Opposing comments  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 28 Apr 2011 15:48:27 -0400  
**To:** Jennifer.Skidmore@noaa.gov

From the PR1 Comments Line

**Subject:** 15537 - Opposing comments  
**From:** Jeni Lyon <[REDACTED]>  
**Date:** Thu, 28 Apr 2011 10:03:42 -0700  
**To:** NMFS.PR1Comments@noaa.gov

Dear Sir or Madam,

I am a rehabilitation volunteer at The Marine Mammal Center in California. I work hands on for up to 12 hours a day in the cold rain and sweltering sun to help nurse seals and sea lions back to health so that they may be released to the wild. The overwhelming motivating force behind my devotion to these animals and TMMC is because our mission is to return these animals to their natural home where they can swim & feed freely and have pups. I understand when an animal is deemed unreleaseable and it is a tremendous relief to know so many of our unreleaseable animals can be placed in zoos and aquariums so that they need not be euthanized. However, to turn over healthy, otherwise releasable, animals to an aquarium for their profit and as entertainment for their patrons is unconscionable and flies in the face of the entire purpose of the rescue and rehabilitation missions of stranding operations like TMMC, as granted by our operating permits issued by NMFS, NOAA and the FDA.

This permit request from the Institute for Marine Mammal Studies is as procedurally flawed as it is morally and legally flawed. According to the Marine Mammal Protection Act, it is illegal to "take" marine mammals from the wild in the United States. Once our animals are deemed healthy enough for release, we are required by our operating permits to release the animals to the wild. Forcing us to turn over healthy animals to IMMS would be forcing us to act in violation of our own operating permits. Furthermore, the EA should have been submitted at the time of the original application and as it is, the EA is woefully incomplete. The EA fails to consider the additional financial costs to stranding operations like TMMC and the incalculable moral cost of granting this ill-conceived, greedy and hasty request from the IMMS.

It would cost stranding and rehab centers like TMMC, which are primarily funded by private donations from people who, like me, generously give money, time and energy to TMMC because we believe whole heartedly in rehabilitating these animals in order to release them to their natural habitat, NOT into captivity except as a last resort. In addition to the substantial additional cost of reporting about our patients to IMMS's Dr. Moby and the cost of continuing to feed releasable animals whilst we wait for Dr. Moby to pick and choose his captives, we would also likely lose the financial support of countless donors once they find out that were being forced turn over healthy animals to live in captivity for private profit. Furthermore, we would also undoubtedly lose volunteers and vet staff due to the awful demoralization of our mission. These costs are immeasurably and unacceptably high.

Granting the IMMS this permit would create a legal precedent that would amount to a slippery slope. If the IMMS can take healthy animals into captivity for private profit and entertainment, then more such institutes and aquariums will undoubtedly request such permits to do the same thing. This permit would be in violation of the Marine Mammal Protection Act and would undoubtedly lead to a long and costly court battle if you grant this permit. Please don't let this happen. I implore

you to deny this permit.

Most sincerely,  
Jennifer Lyon

Volunteer at The Marine Mammal Center:  
Tuesday Day Crew, Education Volunteer and Docent

**15537 - Opposing comments.eml**

**Content-Type:** message/rfc822

**Content-Encoding:** 7bit



**Subject:** Fwd: Comment on EA, File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 28 Apr 2011 15:47:57 -0400  
**To:** Jennifer.Skidmore@noaa.gov

From the PR1 Comments Line

**Subject:** Comment on EA, File No. 15537  
**From:** josephine noah [REDACTED]>  
**Date:** Thu, 28 Apr 2011 09:51:57 -0700  
**To:** NMFS.PR1Comments@noaa.gov

To whom it may concern:

I am writing to express my concern with the Draft Environmental Assessment for the Issuance of a Public Display Permit for Rehabilitated California Sea Lions (Permit File No. 15537; Institute for Marine Mammal Studies), published in April 2011.

I believe there are two fundamental issues that have been overlooked or glossed over. One is the impact, financial and otherwise, on the stranding organizations. I have been a weekly volunteer at The Marine Mammal Center in Sausalito, California, for several years. We rehabilitate a large number of seals and sea lions, some ill, some injured, many from human causes. The purpose of this organization, and every member of the Stranding Network, is to rehabilitate animals, and in some cases gather data that allows us to understand and improve the health of the oceans and these animals. It is sickening to think that the 800 volunteers, and staff and donors, may be contributing our vast efforts and monetary resources to providing healthy releasable animals to a facility that simply does not have the patience to wait, nor the desire to care for any animal that is not perfectly able and healthy. Any facility such as ours has a fixed amount of staff time and money. The impact on our and similar organizations to endlessly provide information and catalogues of animals to IMMS, and then hold on to releasable animals for weeks or months so that they can have their pick of the hundreds of animals that we care for, is ridiculous. This is not the purpose of a stranding response agency, and distracts and detracts from our purpose, and diverts the resources that we have available to care optimally for all of the animals in our charge. There is clearly a financial impact here that is not addressed in the Draft Environmental Assessment. Neither the permit application nor your assessment specify the amount and burden of information that must be provided to IMMS, nor the length of time a releasable animal must be retained under care while Dr. Solangi's staff evaluates, nor whose financial responsibility is to care for these releasable animals for the indeterminate amount of time they are unnecessarily held.

The second impact that you have not addressed is the possible snowball of similar requests that you may get if this permit is granted, and the financial and other impacts of an increase of this kind of demand on the stranding networks. Not only would the financial burdens exist that I have discussed above, but there is a real possibility of a substantial decline in donor and grant dollars, upon which we rely. Some donors would certainly be less inclined to donate to a stranding network if a part of its function is providing healthy animals to captive facilities for shows and breeding. I realize that your Assessment states that you'll evaluate every permit as it comes, but under what criteria? Clearly not the impact on the stranding network, nor the benefits or perils to individual animals.

Thank you for considering my response,

Josephine Noah



**Comment on EA, File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: Against Permit for Institute for Marine Mammal Studies in Gulfport MS  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 28 Apr 2011 15:46:45 -0400  
**To:** Jennifer.Skidmore@noaa.gov

From the PR1 Comments Line

**Subject:** Against Permit for Institute for Marine Mammal Studies in Gulfport MS  
**From:** t mastel <[REDACTED]>  
**Date:** Wed, 27 Apr 2011 21:31:23 -0700 (PDT)  
**To:** NMFS.PR1Comments@noaa.gov

Dear NOAA Rep.,

I'm writing to say I am against the permit for the MMS in Gulfport to take and retain healthy California Sea Lions that could be released into the wild for several reasons.

1. The NEPA analysis (EA) should have been done prior to issuing a notice of the availability of the permit request for comment (as NMFS acknowledges on page 3 of the EA).

2. The EA does not address the fact that stranding networks have invested time and financial resources into caring for stranded sea lions with the belief that this will result in release of the animal to the wild. Instead, the issuance of the permit would betray that uncompensated investment of their time and financial resources and their purpose, to release wild animals back into the wild if they are healthy. This economic impact is not analyzed.


3. Further, the applicant asks that he be provided with an ongoing list of available animals so that he may review them and select those he wishes to retain. This may require additional expense of maintaining an animal that is otherwise ready for release until the applicant can review whether or not it meets his requirements and he wishes to have it turned over to him or released. This potential economic impact is also not analyzed. Asking that stranding networks turn over custody of animals who stranded and were rehabilitated to a point that they are healthy enough for release is little different than using stranding networks as agents of capture to remove marine mammals from the wild, a purpose not consistent with the establishment of stranding networks. In 2009 NMFS issued a Programmatic Environmental Impact Statement (PEIS) on the Marine Mammal Health and Stranding Response Program that provided Policies and Best Practices for Marine Mammal Stranding Response. (available at: <http://www.nmfs.noaa.gov/pr/health/eis.htm>) At that time, NMFS also published and implemented criteria for stranding agreements that stipulated the necessity of releasing healthy, releasable animals within 6 months of being taken into a facility for rehabilitation. The draft EA on the IMMS permit request conflicts with the PEIS. The PEIS on the stranding program never considered the possibility of retention of healthy, releasable marine mammals. Instead, NMFS appears to be trying to set a new direction of policy with this EA by approving retention of healthy animals for captive breeding and income-generating public display without analyzing the impact of the likelihood that they

will be approving multiple permits to do so and thus changing their longstanding policy on which stranding networks have relied.

I strongly urge you to deny this permit.

Sincerely,

Tabea Mastel

  
Concerned Citizen for Wildlife  
Past Volunteer at the Marine Mammal Center

**Against Permit for Institute for Marine Mammal Studies in Gulfport MS.eml**

**Content-Type:** message/rfc822

**Content-Encoding:** 7bit

Chief Permit

Conservation & Education Division

In regards to Document Citation 76 FR 19976, Document # 2011-8576, I respectfully submit that it be denied. There is absolutely no reason why these releasable sea lions should be subjected to a life of captivity. Captivity robs these vibrant beings of every single aspect of the natural life that they have every right to live. It is unfair to these animals that humans insist on deciding who lives where, for how long and under what conditions. The animals themselves should be the ones who are managing the wild, not humans. We have proven time & time again that we are not capable, nor competent in these matters nor do we have the best interests at heart of the very beings who are most impacted by these decisions and who have the most at stake.

Sincerely,

*Emily Pompei*  
Emily Pompei

~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~

Received  
via fax  
5/11/11  
*[Signature]*

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 28 Apr 2011 15:47:11 -0400  
**To:** Jennifer.Skidmore@noaa.gov

From the PR1 Comments Line

**Subject:** File No. 15537  
**From:** Jill Whitebook <[REDACTED]>  
**Date:** Wed, 27 Apr 2011 22:15:07 -0700  
**To:** NMFS.PR1Comments@noaa.gov

**Permit Information for Institute for Marine Mammal Studies (File No. 15537; acquisition of releasable stranded California sea lions for the purpose of public display)  
Application Date: May 2010**

**I am a volunteer at the Marine Mammal Center in Sausalito, CA. I am a docent, a Harbor Seal crew member and on the Stranding and Rescue crew.**

**I vehemently OPPOSE this request for permit.**

**Jill Whitebook**

**File No. 15537.eml**      **Content-Type:**      message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Mon, 02 May 2011 10:27:25 -0400  
**To:** Jennifer.Skidmore@noaa.gov

From the PR1 Comments Line

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**Subject:** File No. 15537  
**From:** John Le Pouvoir <[REDACTED]>  
**Date:** Fri, 29 Apr 2011 19:31:54 -0700  
**To:** "NMFS.Pr1Comments@noaa.gov" <NMFS.PR1Comments@noaa.gov>

Please do not issue a a public display permit or a permit to take releasable stranded California sea lions from west coast stranding facilities for public display purposes to the Institute for Marine Mammal Studies (IMMS), P.O. Box 207, Gulfport, MS 39502 (Dr. Moby Solangi) The action and purpose for which these animals will be used under such permit is reprehensible. The party requesting this permit has demonstrated a lack of responsibility for animals entrusted to his care. These rescued animals have been rehabilitated for release into the wild, and that is the only acceptable outcome.

Sincerely  
John Le Pouvoir

[REDACTED]

File No. 15537.eml      **Content-Type:**      message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:15:43 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Tia Butt <[REDACTED]>  
**Date:** Tue, 10 May 2011 14:06:25 -0500  
**To:** NMFS.PR1Comments@noaa.gov

Please do not put these sea lions into a life of captivity they belong in the wild..they are releasable..please do the right thing and not confine them and sentence with them with a life which is not natural for them. Please put yourselves in their position, where would you rather be?

Thank you

Tia Butt  
[REDACTED]

**File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit



**Subject:** Fwd: Mr. Solange--Captive Sealions File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:58:04 -0400  
**To:** Jennifer.Skidmore@noaa.gov

Comments

**Subject:** Mr. Solange--Captive Sealions File No. 15537  
**From:** [REDACTED]  
**Date:** Tue, 10 May 2011 15:14:52 -0400 (EDT)  
**To:** NMFS.PR1Comments@noaa.gov

I would like to write and let you know that I am Completely against These Sea lions being sent to live in captivity for the rest of their lives. This is no life for any Marine Mammal and Mr. Solange's track record should speak for itself. If these mammals can be released, it is in everyone's best interest to release them back to where they belong

Thank you  
Alyson Walsh

**Mr. Solange--Captive Sealions File No. 15537.eml**

**Content-Type:** message/rfc822

**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:58:19 -0400  
**To:** Jennifer.Skidmore@noaa.gov

comments

**Subject:** File No. 15537  
**From:** Julie <[REDACTED]>  
**Date:** Tue, 10 May 2011 20:57:00 +0100  
**To:** NMFS.PR1Comments@noaa.gov

Hello,  
Please do not allow the request for a permit to take releasable stranded California sea lions (two males and six females) from west coast stranding facilities for public display purposes.  
Thanks  
Julie

**File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:58:32 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Caroline Charlotte <[REDACTED]>  
**Date:** Tue, 10 May 2011 13:08:34 -0700  
**To:** NMFS.PR1Comments@noaa.gov

To whom ever it may concern,

I would like to express my complete DISTRESS over this proposal: File No. 15537. The sea lions, although they may have been rescued, deserve to live their lives out in a natural setting where they are not required to perform demeaning and unnatural circus tricks to the public in order to make profit. These are wild animals and no one, not even those who have nursed them back to health, deserve to place ownership upon them. Dr. Solangi has no right whatsoever to place these injured WILD animals on display for her wallet and the publics' sick conceptions of 'entertainment'.

This proposal deeply disturbs me and I can only hope that those who issue the verdict realize that the public display of animals in small and unnatural environments is not only a pathetic display of so-called 'ownership' and power over those animals typically designated as 'lower' than the human species, but also that these shows or displays cannot be educational in the least, seeing as they are morally corrupt. Even the fact that the report uses the word 'display' stirs up the image that these are not living, breathing individuals, but something to be put into 'place'-- mere material objects.

I strongly suggest that this proposal is not approved and that 'DR.' Solangi grows the heart, and evidently the moral conscience, that she seems to have failed to gain in her time studying medicine.

Sincerely,

Caroline C Mouflard  
[REDACTED]

**File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:58:45 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Carey Sweetser <[REDACTED]>  
**Date:** Tue, 10 May 2011 16:27:00 -0400  
**To:** NMFS.PR1Comments@noaa.gov

Please do not allow these releasable sea lions to be taken from their life of freedom. Allowing them to be placed in captivity is wrong and should not be allowed.

Carey Sweetser

**File No. 15537.eml**      **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

Fwd: captive dolphins

**Subject:** Fwd: captive dolphins  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:59:03 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** captive dolphins  
**From:** Ashley Salaz [REDACTED]  
**Date:** Tue, 10 May 2011 14:44:04 -0600  
**To:** NMFS.PR1Comments@noaa.gov

To whom it may concern,

I'm writing to request the release of the 8 captured and releasable sea lions. No animal should be forced to held captive when it deserves to be free, only to perform tricks or look pretty for mankind to gawk at. Please realize the effect our seemingly simple actions have on the world, and let theses beautiful animals return to where they belong.

Thank you for your time,

Ashley Salaz

**captive dolphins.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:59:41 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** 15537  
**From:** Bill Brown <[REDACTED]>  
**Date:** Tue, 10 May 2011 15:24:59 -0600  
**To:** NMFS.PR1Comments@noaa.gov

I believe it is time to end the cruel practice of imprisoning marine mammal for human entertainment.  
Thank you, Frank Conlin

15537.eml **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:59:16 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Julia Matthews [REDACTED]  
**Date:** Wed, 11 May 2011 08:50:30 +1200 (NZST)  
**To:** NMFS.PR1Comments@noaa.gov

To whom this may concern,

I am writing to you from New Zealand as I have heard that I have the chance to help save 8 releasable sea lions from a life of captivity at the hands of marine mammal terrorist Moby Solangi by sending you an email voicing my concern.

If this is the case then I am asking you to please make this possible.

No animals should be help in captivity especially when they are in no possible threat of extinction.

Thank you for your time

Kind regards,  
Julia Matthews

[REDACTED]

File No. 15537.eml

**Content-Type:** message/rfc822

**Content-Encoding:** 7bit

**Subject:** Fwd: Re: Permit to take sea lions  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 10:59:54 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** Re: Permit to take sea lions  
**From:** [REDACTED]  
**Date:** Tue, 10 May 2011 18:47:25 -0400 (EDT)  
**To:** NMFS.PR1Comments@noaa.gov

I wish to totally oppose the taking into captivity of sea lions. These marine mammals should be released and live their lives free in the ocean where they belong. They should not be held captive and be forced to perform tricks for entertainment purposes.

I object to this application.

Margaret Morton UK

**Re: Permit to take sea lions.eml**

**Content-Type:** message/rfc822

**Content-Encoding:** 7bit



**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:00:06 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Georgia Lawrence <[REDACTED]>  
**Date:** Tue, 10 May 2011 21:24:13 -0500  
**To:** "NMFS.Pr1Comments@noaa.gov" <NMFS.PR1Comments@noaa.gov>

Sirs:

I am protesting this permit. For reasons I have found information to be very disturbing regarding mammal trafficking and the deaths occurring from the stress the mammals are subjected to. If they are releasable, please let them be released. Do not sentence them to a life in a jail.

“Science and the law can both help us forecast the consequences of our actions, but neither can tell us how we ought to act in a moral sense.” – Dalai Lama

Thank you,  
G. Lawrence

File No. 15537.eml

**Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: Notice Marine Mammals; File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:00:34 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** Notice Marine Mammals; File No. 15537  
**From:** Sushma Bhateley <[REDACTED]>  
**Date:** Tue, 10 May 2011 20:32:06 -0700 (PDT)  
**To:** NMFS.PR1Comments@noaa.gov

I DO NOT support issuing this permit, in fact I am firmly against it.  
Sushima Bhateley

.....  
**Notice Marine Mammals; File No. 15537.eml**

**Content-Type:** message/rfc822

**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:00:59 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** "Lily L. Diamond" <[REDACTED]>  
**Date:** Tue, 10 May 2011 21:49:32 -0700  
**To:** NMFS.PR1Comments@noaa.gov

I am absolutely against the release of the stranded California sea lions for public display.  
Thank you!

Lily

--

**Lily L. Diamond, MTOM**  
[REDACTED]

**File No. 15537.eml**      **Content-Type:**      message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:01:52 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Berlinda Acosta <[REDACTED]>  
**Date:** Wed, 11 May 2011 07:42:59 -0400  
**To:** NMFS.PR1Comments@noaa.gov

Please do not approve this permit to allow releasable sea lions to be held captive. People should not be making money off of holding animals captive, and potentially making them perform. If the sea lions are releasable, they should be allowed to be free. The same goes for the dolphins, intelligent creatures who swim miles a day with their families, being held in a swimming pool and forced to do tricks for humans. It is degrading. Please do not allow this man to continue to exploit animals. His history is disgusting, and so are his current actions. Thank you  
Berlinda

**File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Wed, 11 May 2011 11:02:03 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No. 15537  
**From:** Amr Sharara <[REDACTED]>  
**Date:** Wed, 11 May 2011 17:55:03 +0300  
**To:** NMFS.PR1Comments@noaa.gov

Dear Mdm/Sir ,  
Stops to keep animals in captivity.  
best regards  
Amr Sharara

**File No. 15537.eml**      **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: Re: IMMS permit # 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 12 May 2011 12:59:05 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** Re: IMMS permit # 15537  
**From:** Heidi Pacher <[REDACTED]>  
**Date:** Wed, 11 May 2011 08:42:47 -0700  
**To:** NMFS.PR1Comments@noaa.gov

Please deny the permit request for IMMS to display 8 sea lions. If these animals are releasable, why keep them captive? This makes no sense and calls into question the ethics and practice of stranding facilities in this. If animals are rehabbed and not released, but made to perform, the whole practice of helping stranded animals should be called into question. Animals in captivity suffer emotionally and physically. Too many live short lives.

Heidi Pacher

sent via gmail for android

**Re: IMMS permit # 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

Fwd:

**Subject:** Fwd:  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 12 May 2011 13:00:06 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:**  
**From:** heather nagy <[REDACTED]>  
**Date:** Wed, 11 May 2011 22:33:12 +0300  
**To:** NMFS.PR1Comments@noaa.gov

Dear Sir ,

I am emailing regarding the case 15537 and would hope that you consider there are enough wild animals in captivity . The cruel industry has enough friends and I sincerely hope you will be a friend to the Mammals and agree to have them sent back to where they belong .  
Many Thanks in Advance

Kindest Regards Heather

**ForwardedMessage.eml**      **Content-Type:**      message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No 15537/IMMS permit  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 12 May 2011 13:00:50 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File No 15537/IMMS permit  
**From:** Sue Hawley <[REDACTED]>  
**Date:** Wed, 11 May 2011 16:03:32 -0700 (GMT-07:00)  
**To:** NMFS.PR1Comments@noaa.gov

To Whom It May Concern

The NEPA analysis (EA) should have been done prior to issuing a notice of the availability of the permit request for comment (as NMFS acknowledges on page 3 of the EA). Thus it is inappropriate to be considering of issuing the permit at all. The EA does not address the fact that stranding networks have invested time and financial resources into caring for stranded sea lions with the belief that this will result in release of the animal to the wild. Instead, the issuance of the permit would betray that uncompensated investment of their time and financial resources. This economic impact is not analyzed. Further, the applicant asks that he be provided with an ongoing list of available animals so that he may review them and select those he wishes to retain. This may require additional expense of maintaining an animal that is otherwise ready for release until the applicant can review whether or not it meets his requirements and he wishes to have it turned over to him or released. This potential economic impact is also not analyzed.

Asking that stranding networks turn over custody of animals who stranded and were rehabilitated to a point that they are healthy enough for release is little different than using stranding networks as agents of capture to remove marine mammals the wild, a purpose not consistent with the establishment of stranding networks. In 2009 NMFS issued a Programmatic Environmental Impact Statement (PEIS) on the Marine Mammal Health and Stranding Response Program that provided Policies and Best Practices for Marine Mammal Stranding Response. (available at: <http://www.nmfs.noaa.gov/pr/health/eis.htm>) At that time, NMFS also published and implemented criteria for stranding agreements that stipulated the necessity of releasing healthy, releasable animals within 6 months of being taken into a facility for rehabilitation. The draft EA on the IMMS permit request conflicts with the PEIS. The PEIS on the stranding program never considered the possibility of retention of healthy, releasable marine mammals. Instead, NMFS appears to be trying to set a new direction of policy with this EA by approving retention of healthy animals for captive breeding and income-generating public display without analyzing the impact of the likelihood that they will be approving multiple permits to do so and thus changing their longstanding policy on which stranding networks have relied.

My husband and I are volunteers, helping to rescue, rehabilitate and release back into the wild these majestic animals. To work so hard on these animals behalf, to return them to health and fitness only to witness a perfectly releasable animal have to spend its life in captivity is counterproductive to all the efforts of the volunteers that put hearts, sweat and souls into their work. Also, many unreleaseable animals that need permanent care need to have a place to live out the rest of their lives. It has been difficult at best to find facilities to take on blind, maimed but otherwise perfectly healthy, unreleaseable animals. If housing cannot be found they must be euthanized and it breaks our hearts.

Please do not approve this permit.

Respectfully, Suzanne Hawley and Russell Rosenberg

**File No 15537/IMMS permit.eml**

**Content-Type:** message/rfc822

**Content-Encoding:** quoted-printable



Fwd: File # 15537 I say no to a permit

**Subject:** Fwd: File # 15537 I say no to a permit  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Thu, 12 May 2011 13:00:18 -0400  
**To:** Jennifer.Skidmore@noaa.gov

**Subject:** File # 15537 I say no to a permit  
**From:** Anina Stouder <[REDACTED]>  
**Date:** Wed, 11 May 2011 13:24:16 -0700  
**To:** NMFS.PR1Comments@noaa.gov

I am appalled that you would even issue a permit, I vote or say NO.

Also NEPA analysis should have been done prior to issuing a permit.

thank you,  
Anina Stouder

[REDACTED]  
[REDACTED]

**File # 15537 I say no to a permit.eml**

**Content-Type:** message/rfc822  
**Content-Encoding:** 7bit

**Subject:** Fwd: File No. 15537  
**From:** NMFS.PR1Comments@noaa.gov  
**Date:** Tue, 10 May 2011 13:03:49 -0400  
**To:** Jennifer.Skidmore@noaa.gov

From the PR1 Comments Line

**Subject:** File No. 15537  
**From:** Gail Koza <[REDACTED]>  
**Date:** Sat, 07 May 2011 09:20:25 -0700  
**To:** NMFS.PR1Comments@noaa.gov

To Whom it may concern,

I wish to formally submit my comments regarding permit application file no. 15537. I urge you to deny this permit on multiple grounds.

First, it is inhumane to keep healthy animals in captivity when they are able to be released back into the wild.

Second, the NEPA analysis (EA) should have been done prior to issuing a notice of the availability of the permit request for comment (as NMFS acknowledges on page 3 of the EA). It is therefore inappropriate that a permit be issued at all.

Third, the EA does not address the fact that stranding networks have invested time and financial resources into caring for stranded sea lions with the belief that this will result in release of the animal to the wild. Instead, the issuance of the permit would betray that uncompensated investment of their time and financial resources. This economic impact is not analyzed.

Further, the applicant asks that he be provided with an ongoing list of available animals so that he may review them and select those he wishes to retain. This may require additional expense of maintaining an animal that is otherwise ready for release until the applicant can review whether or not it meets his requirements and he wishes to have it turned over to him or released. This potential economic impact is also not analyzed. Asking that stranding networks turn over custody of animals who stranded and were rehabilitated to a point that they are healthy enough for release is little different than using stranding networks as agents of capture to remove marine mammals the wild, a purpose not consistent with the establishment of stranding networks.

In 2009 NMFS issued a Programmatic Environmental Impact Statement (PEIS) on the Marine Mammal Health and Stranding Response Program that provided Policies and Best Practices for Marine Mammal Stranding Response. (available at: <http://www.nmfs.noaa.gov/pr/health/eis.htm>) At that time, NMF also published and implemented criteria for stranding agreements that stipulated the necessity of releasing healthy, releasable animals within 6 months of being taken into a facility for rehabilitation. The draft EA on the IMMS permit request conflicts with the PEIS. The PEIS on the stranding program never considered the possibility of retention of healthy, releasable marine mammals.

I cannot in good conscious support the NMFS is issuing this permit and respectfully request that NMFS not issue the permit.

Sincerely,

Gail Koza  
Volunteer and Donor at The Marine Mammal Center  
Sausalito, CA  
[REDACTED]

**File No. 15537.eml** **Content-Type:** message/rfc822  
**Content-Encoding:** 7bit