



## Finding of No Significant Impact Issuance of Public Display Permit No. 15537

### Background

In March 2010, the National Marine Fisheries Service (NMFS) received an application for a permit (File No. 15537) from Institute for Marine Mammal Studies (IMMS), P.O. Box 207, Gulfport, MS 39502 [Dr. Moby Solangi, Responsible Party] to acquire up to eight releasable rehabilitated California sea lions (*Zalophus californianus*) over a 5-year period. In accordance with the National Environmental Policy Act, NMFS has prepared an Environmental Assessment (EA) analyzing the impacts on the human environment associated with permit issuance (Environmental Assessment for the Issuance of a Public Display Permit for Rehabilitated California Sea Lions; September 2011). The analyses in the EA support the below findings and determination.

### Analysis

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans?

The California sea lions (*Zalophus californianus*) under consideration for this permit would already have been removed from the wild into a rehabilitation center under separate authority. These animals would not be released to the wild; therefore, this action would not impact any ocean and coastal habitats including national marine sanctuaries, coral reef ecosystems or Essential Fish Habitat.

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

These animals would have been taken into captivity for rehabilitation under a separate authority and subsequently deemed suitable for release. Issuance of this permit would prevent the release of a selected number of individual animals to the wild; instead, they would be transferred to a public display facility. Thus, this action is similar in its effects on the species to that of a collection from the wild in



that these animals are effectively being removed from the wild population (because they are not being released). The animals under consideration are from a population that is stable, and the population effects of retaining eight animals in captivity would be negligible. Therefore, there would be no substantial impact on biodiversity and ecosystem function.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

The proposed action would not have a substantial adverse impact on public health and safety. These animals would be incorporated into the public display program of IMMS and maintained in accordance with the Animal Welfare Act (AWA). The staff at IMMS would be properly trained in husbandry protocols and safety procedures. Issues of zoonotic disease transmission between display animals and the general public are not covered under the MMPA.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

California sea lions are not listed under the Endangered Species Act. The animals under consideration for this permit have already been removed from the wild and placed into a rehabilitation center by the National Marine Fisheries Service (NMFS) Marine Mammal Stranding Network; and thus, this permit would not authorize any collection activity in the wild. Therefore, no adverse effects to habitats or non-target species would occur. There would be effects only to the low number (up to 8) of individual pinnipeds retained in captivity. These effects would be considered minimal, as the animals would be maintained in accordance with the AWA.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Social or economic impacts interrelated with potential natural or physical impacts of the action were identified associated with the rehabilitation facilities, but these social and economic impacts are not considered significant. As entities which rely on community support (donors and volunteers), support for the stranding network facilities could decline if those facilities were required to provide animals for the purposes of this permit. In response to these concerns, NMFS has determined in the proposed action that rehabilitation facilities should not be forced to participate in the transfer of animals if it is not their desire to do so. Specifically at IMMS, the display of sea lions would expand the education program of the facility as well as potentially create some jobs, however, such impacts would be negligible on a national or regional (state) level and therefore are not considered significant. The action does not involve and is not associated with factors typically related to effects on the social and economic environment

such as inequitable distributions of environmental burdens or differential access to natural or depletable resources in the action area.

6) Are the effects on the quality of the human environment likely to be highly controversial?

There were two public comment periods pertaining to this action (notice of receipt of the application and notice of availability of the EA). The notice of receipt of the application published in the *Federal Register* on May 20, 2010 (75 FR 28239). Based on previous permits to retain releasable rehabilitated pinnipeds, NMFS made an initial determination that an EA was the appropriate level of NEPA analysis for this action. During the public comment period, comments were received regarding the biological and economic impacts of this action. NMFS has proceeded with preparation of an EA in order to fully analyze the environmental effects that would result from the issuance of this permit. Comments objecting to the issuance of a permit were referenced as evidence of controversy by commenters (specifically the Humane Society of the United States). The definition of “controversy” in the context of an EA does not imply that an unpopular action is by default controversial. Rather, the test for determining whether an action is “controversial” is whether a substantive dispute exists as to its size, nature, or effect on the human environment. The controversy must be in the context of the environmental effects of the action and, in this case, the environmental effects of the action have not been questioned by the public (the removal of eight individual animals from the population), and, therefore, there is not substantial controversy over environmental effects.

Public comments received on the application and the draft EA and NMFS’ responses to these comments are summarized below. A more detailed analysis of the comments can be found in the supporting EA. A total of 15 comments on the application were received; all of them fall into the following topic areas:

- (1) placement of releasable animals into captivity is in violation of the MMPA and NMFS implementing regulations;
  - The applicant is requesting a take permit pursuant to section 104 of the MMPA and the action is supported by NMFS’ regulations which allow the use of a rehabilitated marine mammal for public display purposes in lieu of animals taken from the wild.
- (2) commenters were opposed to the public display of marine mammals;
  - Comments in opposition of the public display of marine mammals are beyond the scope to be considered for this permit. The MMPA specifically provides for public display as one of the exceptions under the Act.
- (3) the issuance of the permit is precedent setting;
  - Each permit application is evaluated on its own merits and permits of this nature have been considered previously.

- (4) IMMS should receive non-releasable sea lions or those animals targeted for lethal removal;
  - IMMS has indicated that they are interested in accepting non-releasable animals that align with their program needs.
- (5) stranding facilities should not be “forced” to provide animals to IMMS under the proposed permit;
  - NMFS will not instruct or force any rehabilitation facility to provide animals to IMMS through the permit. IMMS will be responsible for establishing partnerships with likeminded rehabilitation facilities.
- (6) IMMS fails to meet APHIS standards of animal care and maintenance;
  - Comments pertaining to animal care and maintenance are under the purview of APHIS and the AWA. APHIS has confirmed that the applicant holds an exhibitor’s license and did not provide any additional comments regarding compliance under the AWA.
- (7) IMMS does not have an adequate educational program;
  - The MMPA requires that education programs be based on professional recognized standards of the public display industry and NMFS is satisfied that the documentation provided by IMMS demonstrates that they meet industry standards.
- (8) litigation between the applicant and NMFS regarding the custody of a non-releasable bottlenose dolphin demonstrates a lack of respect for the stranding network and its processes.
  - The court case over the custody of the non-releasable bottlenose dolphin has concluded and does not have any bearing on the issuance of this permit.

A notice of availability of the draft EA was published in the *Federal Register* on April 11, 2011 (76 FR 19976). Thirty-seven comments were received during the public comment period on the EA. Many of the above topics were revisited and have been further discussed in the resulting EA. Regarding the draft EA, the following comments were received:

- (1) the EA should have been done prior to publication of the Federal Register notice announcing the receipt of the permit application;
  - In this case, NMFS separated the comment periods for the receipt of the application and the availability of the draft environmental assessment by providing for a different comment period to solicit comment on the draft EA, thus satisfying its responsibilities.
- (2) the draft EA for this permit conflicts with the Final Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program (PEIS);
  - The PEIS evaluated the effect of responding, rehabilitation and releasing stranded marine mammals back into the environment, whereas this EA is evaluating the effect of retaining a few of these animals in captivity. Therefore, these are separate federal actions with different scopes.
- (3) the description of the biological environment is deficient in the draft EA;
  - NEPA requires the use of the best available scientific data when

considering the effects of potential activities and accordingly NMFS has turned to the most recent stock assessment report of this species.

- (4) the analysis of the social and economic impacts in the draft EA is inadequate;
- The EA has been amended to take into account the time and financial resources invested by the stranding network members in order to rehabilitate marine mammals with the intent to release them back into the wild.
- (5) NMFS failed to consider other reasonable alternatives;
- Based on the comments received on the EA, additional alternatives have been incorporated into the EA for consideration: (1) issuing the permit as requested by the applicant and (2) issuing the permit but imposing a waiting period before the effective date.
- (6) the EA does not properly define the purpose and need of the proposed action;
- With respect to the purpose and need, the federal action to be analyzed is the effect of issuance of the requested permit. In response to this application, there are ultimately two outcomes: issue the permit or deny the permit. Other alternatives include limitations or restrictions based on the applicant's request, but still involve issuance of a permit.
- (7) an EA is not the appropriate level of analysis for this action and an Environmental Impact Statement is required.
- NMFS has analyzed the proposed action in the context of an environmental assessment and has found that all effects would not result in any significant impacts as noted in the recommendation below.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

The action area is limited to rehabilitation facilities from where the animals will be selected and IMMS facility in Gulfport, MS, where the animals will be maintained permanently. No area in the wild would be affected.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The effects of the proposed action are not highly uncertain nor do they involve unique or unknown risks. The MMPA specifically allows for the public display of marine mammals and the potential effects of maintaining marine mammals in captivity are known and addressed by the AWA.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

The proposed action is not related to other actions with individually insignificant but cumulatively significant impacts. Overall, the proposed action would be expected to result in no short-term or long-term effects on the individual species'

populations or the surrounding environment. Individual target animals may experience short-term stresses associated with transport; however, those stresses are expected to be minimal. While in captivity, these animals will be maintained in accordance with the AWA. There will be no impacts to non-target species, as the animals under consideration would come from those being cared for in a rehabilitation facility and already removed from the wild. The incremental impact of the action when added to other past, present, and reasonably foreseeable future actions would be minimal and not significant.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

The proposed action would be limited to the IMMS facility in Gulfport, MS and partnering rehabilitation facilities. No activities would occur in the wild. This action would not affect entities listed in or eligible for listing in the National Register of Historic Places, nor would it cause loss or destruction of significant scientific, cultural, or historic resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

The proposed action is not likely to result in the introduction or spread of a non-indigenous species. Animals under consideration would be wild animals being rehabilitated at a stranding facility and medically cleared for release, but not yet released. These animals would be transferred directly from the stranding facility to IMMS and permanently maintained in captivity. Any animal found to be unsuitable for IMMS's public display program would continue to separately be considered for release to the wild in accordance with the regulations and guidelines of the Marine Mammal Health and Stranding Response Program.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Issuance of the permit would not establish a precedent for future actions or represent a decision in principle about future proposals. This is the third permit request to take releasable pinnipeds received since 2003. It is possible that other members of the public display community could apply for similar permits requesting releasable animals for public display purposes; however, each permit application received is evaluated on its own merits relative to the criteria established in the MMPA and NMFS' implementing regulations. Issuance of a permit to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize other individuals or organizations to conduct the same or similar activity.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

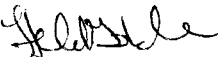
The action would not result in any violation of Federal state or local laws for environmental protection. As previously stated, the MMPA recognizes public display as an exception to the take moratorium under the Act and IMMS meets the criteria under the MMPA to hold marine mammals for public display purposes. Furthermore, the regulations at 50 CFR 216.27(b)(4) specifically allow for the issuance of special exemption permits regarding the disposition of rehabilitated marine mammals. IMMS holds a current, valid license under the AWA to hold marine mammals for public display purposes.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The action is not expected to result in any cumulative adverse effects on the requested species, California sea lions. The individual animals under consideration would already be removed from the wild population due to stranding. While these animals would be successfully rehabilitated to the point that they are considered healthy and releasable to the wild, the subject population is not threatened or endangered, and is considered healthy. Therefore, not releasing a small finite number of California sea lions to the wild will not have a substantial effect on the target species. No effects, adverse or otherwise, are expected on non-target species.

#### DETERMINATION

In view of the information presented in this document, and the analyses contained in the EA prepared for issuance of Permit No. 15537, it is hereby determined that permit issuance will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

*for*   
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James H. Lecky  
Director, Office of Protected Resources

9/28/11  
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Date