

I. APPLICATION FOR A PERMIT FOR PUBLIC DISPLAY UNDER THE MARINE MAMMAL PROTECTION ACT.

This request is to take eight (8) stranded, releasable **California sea lions** (*Zalophus californianus*) for public display purposes.

II. DATE OF APPLICATION

March 5, 2010

III. APPLICANT

The applicant, the Institute for Marine Mammal Studies, (“**IMMS**”), is a 501 (c) (3) non profit corporation. IMMS has recently completed a new facility entitled the Center for Marine Education and Research (“**CMER**”), in Gulfport, Mississippi. IMMS is a United States Department of Agriculture (“**USDA**”) licensed marine mammal public display facility which is open to the general public on a regularly scheduled basis, and offers programs of education and conservation. All correspondence regarding this application should be addressed to:

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IV. DESCRIPTION OF THE MARINE MAMMALS AND THE PROPOSED ACTIVITY

A. Statement of Work

Applicant requests authorization to take eight (8) stranded, releasable California sea lions (*Zalophus californianus*) for public display over a five-year period. IMMS would have the right to examine and evaluate the stranded animals before accepting them, according to criteria listed in section IV.C.3 below. IMMS will also consider non-releasables (activity not covered under this permit). These sea lions would become part of IMMS’ inventory of marine mammals and a major part of IMMS’ educational programs for schools, universities, and the general public, which not only describe the biology, natural history and behavior of marine mammals but also

include information on protecting the marine environment. IMMS is the only marine mammal public display facility in the states of Mississippi and Alabama.

This request would not involve the incidental take of any non-target marine mammals or ESA-listed species. The requested stranded, releasable sea lions would be from the Southwest Region of the United States, according to the delineation of the National Marine Mammal Stranding Network, specifically, from the state of California. The animals taken would not be from any depleted stocks or otherwise endangered or threatened species or stocks. We request that our permit be issued for a five-year period.

B. Summary of Marine Mammals to be Taken or Imported

The common name of the target species is California sea lion, and the scientific name is *Zalophus californianus*. No animals will be imported with this permit and no animals will be collected directly from the wild, therefore there should be no impact upon this species in the wild or on its ecosystem. In lieu of a take from the wild, we are requesting to take stranded California sea lions that may be deemed releasable as they likely would have died without human intervention to save them. There are many examples where released stranded animals have been attacked and killed by predators, or have re-stranded after their initial release.

Dr. Michael Moore (Woods Hole Oceanographic Institute) et al. offer alternate perspectives in the article “Rehabilitation and Release of Marine Mammals in the U.S.: Risks and Benefits” in the October 2007 edition of Marine Mammal Science, where they describe how historically, stranded, rehabilitated marine mammals either did not survive or were placed in permanent collections in zoos or aquaria (see Appendix A – Exhibits 1 and 2). The article also mentions how in a 1991 workshop (St. Aubin et. al. 1996) on stranding response and rehabilitation, there was general agreement that the health of wild populations should be of greater concern than the welfare of an individual animal. At that time, the issues of highest concern for the professionals in the marine mammal stranding response field were risks of introduction of disease into the wild populations carried by the stranded animals and the potential genetic consequences of releasing rehabilitated animals (Wilkinson and Worthy 1999). In fact, though the genetic consequence is a valid, but only speculative or perceived risk of releasing rehabilitated marine mammals back into the wild (at least to date), the risk of introducing pathogens into the native wild population through the release of stranded animals has been scientifically supported (Moore et al. 2007). To further illustrate this point, the authors mention a Canadian review of the subject (Measures 2004) which strongly voices concern about American practices of releasing rehabilitated marine mammals back into wild populations. In most cases, when an animal strands, nature has rejected it, and it is no longer part of the ecosystem.

IMMS proposes to select California sea lions that strand in the southwest region and retain them in their collection instead of being released back into the wild. Such a

take would **NOT** require collecting healthy individuals directly from the wild and would help alleviate issues as to what to do with stranded animals. Sea lion populations are at all time high levels. NMFS has deemed them a nuisance species and spends substantial sums each year trying to control the population (see Appendix B – Photos of Sea Lions in Human Communities). Any acquisition would be predicated on the acceptance of the animal by our veterinary, husbandry, and training staff.

This request does not include the taking of marine mammal parts.

Status of the Stocks

California sea lions, *Zalophus californianus*, reside in the Eastern North Pacific Ocean and range from the Pacific coast of Central Mexico north to British Columbia, Canada (NOAA Fisheries, www.nmfs.noaa.gov/pr/species). The general California sea lion population is divided into three stocks: the United States stock, the Western Baja California stock, and the Gulf of California stock (Lowry et al., 1992). **The proposed take will be from the US stock.**

The U.S. stock typically resides in shallow coastal and estuarine waters, sandy beaches, marina docks as well as jetties and buoys. Because they are social animals, California sea lions are often seen in groups of several hundred individuals inshore (NOAA Fisheries, www.nmfs.noaa.gov/pr/species). California sea lions are found in abundance along the western coast of the United States. The species is not designated as “depleted” under the MMPA, is not listed as either “threatened” or “endangered” under the Endangered Species Act (www.fws.gov/Endangered/wildlife.html), has no special status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (www.CITES.org), and is rated as a species of “least concern” on the World Conservation Union Red List of Threatened Species (www.iucnredlist.org). The U.S. Stock population was estimated to be 238,000 individuals in a 2005 census study (NOAA Fisheries Sea Lion US Stock Assessment Report, 2007). See Appendix C. Additionally, according to the same study, the U.S. stock is not considered to be “strategic” under the MMPA, because (based on historical takes in the set gillnet fishery and current levels of fishing effort) total human-caused mortality is still likely to be less than the Potential Biological Removal (PBR), which is calculated to be 8,511. The total fishery mortality and serious injury rate for this stock likely remains above 10 percent of the calculated PBR and, therefore, cannot be considered to be insignificant and approaching a zero mortality and serious injury rate. The PBR level for this stock is calculated as the minimum population size (141,842) times one half the default maximum net growth rate for pinnipeds (1/2 of 12%) times a recovery factor of 1.0 (for a stock of unknown status that is growing); resulting in a PBR of 8,511 sea lions per year. Even if all of the annual strandings of California sea lions were included in this number, and none of the live strandings were released back to the wild, it would still be much smaller than the PBR. Our requested take of 8 releasable sea lions is infinitesimal compared to the PBR.

Hundreds of live sea lions strand every year and many are either released, deemed non-releasable, or euthanized. Data provided by NMFS Southwest Regional Office in California (February 2010) indicates that during a seven (7) year period, from 2000 to 2006, 11,738 sea lions stranded in the Southwest region of the U.S. Of these, 4,204 were dead (Average 600/yr), 7,534 were alive (Average 1,076/yr), and 3,678 were released (Average 525/yr). In just **ONE** of the five large stranding rehabilitation facilities in California, during a ten month period from June 2008 through March 2009, a total of 445 sea lions were admitted (includes live and dead animals). Their statistics report that 172 of these animals were either released or transferred to permanent captive care, and 285 necropsies were performed (see Appendix D - Sealine - The Volunteer Newsletter of The Marine Mammal Center, Fall 2008 and Spring 2009 editions). The necropsy total includes carcasses, those that were euthanized, and those that died during treatment. In fact, in the fall 2005 edition of the same publication, it was reported that the facility's board approved a new euthanasia policy to include animals that could not be released or placed in adequate long-term captive care facilities. According to the July 2009 edition of the California Marine Mammal Stranding Network Newsletter of the NOAA Fisheries Southwest Regional Office (see Appendix E), California sea lions were stranding at a very high rate in central and southern California for the first half of that year. Many facilities had admitted more sea lions in those first six months than they had in all of 2008. The newsletter goes on to mention that most of the stranded animals were yearlings that were coming in emaciated and weak, and that they did not understand why. The stranding facilities are operating beyond their capacity, and are forced to euthanize animals due to lack of facilities and financial resources to care for them. Our proposed take is certainly a better alternative for the animal than euthanasia.

The above reports illustrate the fact that the U.S. stock of California sea lions is indeed abundant, thriving, and possibly at the point where they are past carrying capacity and are unable to find food. In the 2007 NOAA Fisheries Sea Lion U.S. Stock Assessment Report (Appendix C), the stock was reported as having reached its Maximum Net Productivity Level of 39,800 pups in 1997 and its carrying capacity at 46,800 pups per year. Sea lion populations are indeed at all time high levels. NMFS has deemed them a nuisance species and spends substantial sums each year trying to control the population.

The following excerpt comes from a presentation given at the National Stranding Conference in West Virginia, April 6-9, 2010, entitled "**CHALLENGES FOR THE NORTHERN OREGON/SOUTHERN WASHINGTON MARINE MAMMAL STRANDING NETWORK**", authored by Deborah A. Duffield; Barros, Nelio B.; D'Alessandro, Dalin; Chandler, Keith; Hussa Jason; Boothe, Tiffany; Rice, James M.

"We have had an upsurge in the number of sea lions that have been shot (both California and Steller), especially around the mouth of the Columbia River where several fisheries (including crab, salmon and sturgeon fisheries) abound and where decreases in the number of fish and the increase in the number of California sea lions, in particular, has focused a great deal of animosity towards marine mammals."

Other illustrations of the statement come from various newspaper articles and stories about how California sea lions are being encountered more and more often in human environments, such as on piers, boats, and in residential areas such as private yards and porches. Please see Appendix F which gives an example of a related newspaper article, and Appendix B which contains photos demonstrating how sea lions have gone beyond their habitat and have begun intruding on the human habitat.

C. Description of the Proposed Activity

- 1) As mentioned in section IV. A., IMMS requests to take eight (8) stranded, releasable California sea lions for public display, from the stranding facilities in the Southwest Region of the United States (specifically California), as they become available over the next five (5) years. IMMS will also consider acquiring stranded California sea lions that were deemed non-releasable, however any non-releasable as well as releasable sea lion that IMMS considers would have to meet certain program criteria and pass our veterinary and husbandry/training staff evaluation as described below in section IV.C.3.

The date of this “take” or request would be as soon as possible, starting with the first available sea lion that would conform to our requirements. Over the next five years, especially during the known stranding seasons, we would work with the various California stranding facilities to coordinate our activities and work out logistics. We cannot list a definitive timetable as this request involves more of an opportunistic effort that depends on the availability of the stranded sea lions over a five-year period.

As all stranding facilities operate under NMFS’ jurisdiction, governed by their LOA/Stranding Agreements, we would request NMFS to authorize and instruct the different stranding facilities to cooperate with us and make available to IMMS pertinent information (medical, behavior/feeding records, etc.) on the candidate sea lion(s). If NMFS will help us in this regard, then we will be able to examine and inspect both releasable and non-releasable stranded animals for selection. After NMFS notifies us of this authorization and instruction to the California stranding facilities, then we will begin communicating with the stranding facilities to work out the details and logistics of evaluating sea lion candidates.

- 2) We request the duration of the permit to be five (5) years.
- 3) The type of taking involved would be to keep eight (8) stranded, releasable California sea lions in captivity for public display. We would give non-releasable, stranded animals first consideration in this request, however, any given candidate (releasable or non-releasable) would need to be evaluated by our veterinarian and husbandry/training staff as mentioned below, before a selection would be made. The animals that we would consider would be weaned pups or

juveniles that are estimated to be two (2) years or less in age. We also request that these eight (8) sea lions be comprised of six (6) females and two (2) males. We will make a selection based on age, size, sex, behavior, and our veterinarian's medical evaluation of the animal. We will consider "restranded animals" that do not appear to be debilitated or have a medical history that would indicate such condition. We 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 that will be able to perform shows and educational demonstrations for the general public, and which will be compatible to be housed with other sea lions appropriate for the given animal's age and sex. No pregnant or lactating animals would be taken by this permit.

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-sea-lion-program" at this time. In the event that there is contact and/or interaction with guests, proper measures will be taken, both in the design of the facility, and training of the animal(s) to ensure the safety of BOTH the animal(s) and the humans. All of our activities will be covered by our permit with USDA/APHIS.

IMMS will assume full care, custody and control of the requested sea lion(s) once the animal(s) is/are released to our custody. IMMS will make transport arrangements on a case-by-case basis, done in compliance with all regulatory requirements of the USDA, including methods of transport and qualification of transporting personnel. Depending on the circumstances, we would use either air or ground transportation based on the recommendation of our attending veterinarian. The transporting crate dimensions would be based on the size of the animal and the recommendation of the attending veterinarian. If an air transport is done, we would abide by all IATA regulations. Also, if required for any reason, the attending veterinarian will accompany the animal(s) on the transport. Both the attending veterinarian and the husbandry/training staff at IMMS are extremely well-qualified to transport sea lions, with over 17 years of experience transporting these animals by ground and air methods.

D. If Marine Mammals are to be Collected from the Wild

For questions numbered 1-6, the collection associated with the stranding response would be done under the authority of the stranding network.

7. We are requesting this take of releasable, stranded California sea lions because there is a paucity of animals available through other public display facilities. According to NMFS, because of this shortage of sea lions, there is a very long waiting list of 20 or more facilities that are waiting for the availability of a non-releasable California sea lion. 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.

9. The criteria involved with the selection of the eight (8) requested, stranded, releasable California sea lions, is mentioned in section IV.C.3. but is also listed again below. IMMS would communicate with the stranding facilities directly, once NMFS authorizes the facilities to interact with us for the purpose of animal selection. At this point we would discuss our criteria (described below) for selection of an animal for our program, with the stranding facility, and then evaluate any animals that they mention that might meet our criteria. We would give non-releasable, stranded animals first consideration in this request, however, any given candidate (releasable or non-releasable) would need to be evaluated by our veterinarian and husbandry/training staff as follows. The animals that we would consider would be weaned pups or juveniles that are estimated to be two (2) years or less in age. We also request that these eight (8) sea lions be comprised of six (6) females and two (2) males. We will make a selection based on age, size, sex, behavior, and our veterinarian's medical evaluation of the animal. We will consider "restranded animals" that do not appear to be debilitated or have a medical history that would indicate such condition. We 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. If a releasable animal is not suitable for our program, it would not be selected from the stranding network's pool of animals, and it would be released back into the wild according to the criteria and protocol of the stranding network. Once we select an animal and transport it to our facility, we plan to keep it for the various program activities described in Section IV.C.3.

E. If Marine Mammals are to be Imported into the U.S.

Not Applicable. (No marine mammals are to be imported into the U.S. under this permit.)

F. Effects of the Proposed Activity

There are no adverse impacts on the individual sea lions, the species as a whole, the human environment, or the marine environment anticipated as a result of taking these

eight (8) stranded, releasable sea lions for public display. The ability to display these animals will, pursuant to the MMPA, assist us to educate the general public about the concerns relating to marine mammals and the marine environment. In addition, these individual sea lions may add important genetic diversity to the captive population. As our inventory grows, IMMS has intentions to breed the sea lions that we acquire. At some point in the future, when we have collected several animals that have reached sexual maturity, we will look at developing partnerships with other interested organizations for breeding purposes.

a) Effects on the Individual Sea Lions:

There are no significant adverse effects on the individual sea lions anticipated as a result of keeping these animals in captivity for public display, as opposed to releasing them to the wild or euthanizing them. We are requesting to keep releasable stranded sea lions, which by nature of their very circumstances would not have survived without human intervention. These are individuals that nature has already expelled/rejected from the wild population. If it were not for human intervention, these animals would have died on the beach. There are many examples where released stranded animals have been attacked and killed by predators, or have re-stranded after their initial release.

It is possible that keeping a stranded, releasable sea lion in captivity for public display will have a positive effect on the individual animal as it will be provided good nutrition and high-quality health/medical care, which may lengthen its life span. Medical care is often a vital part of a captive or domestic animal's well-being; a benefit that an individual animal would not have had in the wild. In addition, in some circumstances stranded animals of certain species and/or ages are automatically euthanized instead of being released or sent to a rehabilitation or public display facility (Moore et al., 2007).

The act of keeping the aforementioned stranded sea lions in captivity for public display is a much better alternative than euthanasia, not only for the individual animal, but for the species as well as the human environment. This is because if you euthanize an animal, it cannot serve as an ambassador for its species. Many captive animals serve this purpose by performing educational presentations and being an integral part of educational exhibits. By serving as a living tool for educating the public about their species and marine conservation issues, these animals can promote conservation of their species. Humans benefit because as a species, humans need healthy oceans and marine ecosystems for subsistence, commerce, recreation, and other reasons. 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. In addition, it is consistent with the Marine Mammal Protection Act (MMPA) to use these animals in educational programs and it promotes the MMPA goals and objectives.

Humans may also benefit because there may be a few less nuisance animals intruding in the human environments. As mentioned in section IV. B. in the permit application, and as illustrated in Appendix B of the application, there have been many occurrences of California sea lions intruding on human environments in destructive and potentially dangerous ways. These actions have caused some human communities to harbor considerable anger for the species and consequently in some instances, negative human interaction (HI) has resulted in unfortunate circumstances for individual sea lions. The education factor can be a benefit in this regard as well, because as more people are educated about sea lions, HI threats, marine ecosystems and marine conservation issues, perhaps there will be fewer HI threats for sea lions. Lastly, though our take request is infinitesimal in terms of the stock population and PBR, there would be less competition for food if 8 less sea lions were released back into the wild population. This represents another benefit for the species as our take would decrease the load and stress on the wild population.

b) Impact on the Species or Stock:

The take of eight (8) stranded, releasable sea lions will have no impact on the species in the wild as there will be no removal of animals from the wild associated with this act. These sea lions would have already been removed from the wild by natural selection methods. This is inherent in their stranding event as they must have had one or more problems which caused them to strand. Therefore, without the intervention of humans, they would have died, perhaps a painful death.

Dr. Michael Moore of Woods Hole Oceanographic Institute (Moore et al., 2007) describes how historically, stranded, rehabilitated marine mammals either did not survive or were placed in permanent collections in zoos or aquaria (see Appendix A – Exhibits 1 and 2). The same article also mentions how in a 1991 workshop (St. Aubin et. al. 1996) on stranding response and rehabilitation, there was general agreement that the health of wild populations should be of greater concern than the welfare of an individual animal. At that time, the issues of highest concern for the professionals in the marine mammal stranding response field were risks of introduction of disease into the wild populations and the potential genetic consequences of releasing rehabilitated animals (Wilkinson and Worthy 1999). In fact, though the genetic consequence is a valid but only speculative or perceived risk of releasing rehabilitated marine mammals back into the wild (at least to date), the risk of introducing pathogens into the native wild population has been scientifically supported (Moore et al. 2007). To further illustrate this point, the authors mention a Canadian review of the subject (Measures 2004) which strongly voices concern about American practices of releasing rehabilitated marine mammals back into wild populations.

In summary, there would be no significant impact on the wild stocks and yet a positive impact, perhaps, on the individual animal(s) involved.

c) *Impact on the Human Environment*

The removal of these requested sea lions would likely impact the human environment in a positive way by helping to alleviate pressures associated with their overabundant population. The overgrowth of the California sea lion population on the West Coast has caused numerous problems with human communities as reports abound of California sea lions that frequent piers, boat docks, and associated structures, and engage in attacking and biting people. One of these reports is in a very public and popular tourist destination in San Francisco, CA (see Appendix F - The Seattle Times, November 30, 2006). In addition, in the 1994 Amendments to the MMPA, Congress directed that a scientific investigation be conducted to determine whether California sea lions and Pacific harbor seals were having a negative impact on the recovery of Salmonid fishery stocks which had been listed as endangered or threatened (Weise, M.J and Harvey, J.T., 1999). To address this investigation, NMFS established a Working Group which found that both of these species were interacting with many commercial and recreational fisheries on the West Coast of the U.S. The Group found numerous instances of conflicts at docks and marinas, primarily with California sea lions, that raised human safety concerns. The Working Group also reviewed mitigation measures that had been used to reduce or eliminate Pinniped predation on Salmonids or minimize interactions with fisheries and found that most nonlethal deterrence measures had limited or short-term effectiveness (NOAA Technical Memorandum NMFS-NWFSC-28). These fishery interactions are obviously not just a concern for the balance upset between Salmonid and Pinnipeds, but also for the humans involved whose safety and livelihood may be at risk. Currently, NMFS has authorized the lethal take of almost one-hundred sea lions to protect the salmon stocks (Personal communication with NMFS headquarters).

The proposed activity will have a positive impact on the human environment in another way as well. Dolphins, sea lions and other marine mammals are very high-profile animals that are well-loved and admired by people throughout the world. Because marine mammals are perceived as special, people pay attention to preserving these animals, their habitats and associated environments. Therefore, sea lions may serve as ambassadors to educate people about current marine conservation issues and other such important topics. According to the press release of a public opinion poll study in 2005 conducted by the Alliance of Marine Mammal Parks and Aquariums in conjunction with Harris Interactive, Inc. (see Appendix G), 97 percent of respondents felt that marine parks, aquariums and zoos played an important role in educating the public about marine mammals, and the importance of oceans and the ocean's inhabitants. Perhaps most importantly, 93 percent of people believed that marine parks, aquariums and zoos can inspire conservation action that can help marine mammals and their natural

environments. This is just one example of how keeping releasable stranded sea lions for public display can have a positive impact on the human environment, and perhaps the marine environment as well.

The take of eight (8) stranded, releasable sea lions in captivity for public display is in furtherance of the policy of the MMPA to allow for the public display of marine mammals. The House Resources Committee, in its 2004 report on the reauthorization of the Marine Mammal Protection Act, states the following:

The Committee commends the public display community for its role in the conservation and management of marine mammals. Activities sponsored by public display facilities – research, educational programs and presentations, animal husbandry, breeding, and rescue and rehabilitation – are important aspects to the conservation of marine mammals. The rescue and rehabilitation programs run by these facilities are critical to the survival of stranded animals and for many years participating institutions ran these programs using their own funds. In addition, these facilities play an invaluable role for the general public. These public display facilities are the only place for many Americans to view marine mammals and learn about the conservation needs of these animals. The Committee believes that interactions provided at these facilities generate the general public’s good will toward marine mammals and develops their support for conservation and management measures for these and many other ocean creatures.

H.R. Report No. 108-464, at 21 (2004).

A review of the factors set forth in 40 C.F.R. § 1508.27 clearly demonstrates that issuance of this permit will not significantly affect the quality of the human environment in a negative way.

- 1) There will be no adverse impacts on the environment resulting from the “take” of eight (8) stranded, releasable sea lions. Specifically, there will be no adverse impacts on California sea lions remaining in the environment as there will be no taking of animals from the wild populations, only the retention of eight (8) sea lions that were already “expelled” from the wild by nature.
- 2) This take will not significantly affect public health or safety. There will be no risk to the public health due to not releasing these eight (8) stranded sea lions. There will be no threat to public safety by not releasing these same animals. To the contrary, any threat or risk to public safety may actually be avoided by not releasing these stranded sea lions as in their course of rehabilitation, they undergo several weeks/months of interaction with humans and may tend to seek out similar interaction in the wild. Even though interaction is kept at a minimum during rehabilitation, it is impossible to eliminate it completely, and no one knows the effects that even minimal interaction with humans may have on a young sea lion, once released back to the wild.

- 3) There are no unique characteristics of a geographic region affected by not releasing these stranded sea lions.
- 4) The effect of the take pursuant to our request on the quality of the human environment is not likely to be highly controversial. For an action to qualify as “highly controversial” there must be a substantial dispute about the size, nature or effect of the major federal action rather than the existence of opposition to it. The Fund for Animals v. Williams, 246 F.Supp.2d 27, 45 (D.D.C. 2003), citing Friends of the Earth v. Army Corps of Engineers, 109 F.Supp.2d 30, 43 (D.D.C. 2000); Rucker v. Willis, 484 F.2d 158, 162 (4th Cir. 1973). A “controversy” does not exist merely because some individuals or groups are highly agitated about, vigorously oppose, or have raised questions about the action. That kind of bootstrap reasoning would permit such an opponent to sidestep his burdens under the law simply by declaring the existence of a “controversy.” . . . [I]f controversy were equated with opposition, the [environmental impact statement] outcome would be governed by a “heckler’s veto.” The Fund For Animals v. Williams, 246 F.Supp.2d at 45 n.18. Nor does “controversy” exist simply because there are conflicting views among experts. Id. at 45, citing Sierra Club v. Watkins, 808 F. Supp. 852, 862 (D.D.C. 1991). Disagreement among experts relied upon NMFS and outside experts, or experts hired by parties opposing a permit, also does not create a controversy under the National Environmental Policy Act (“NEPA”). When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts. The Fund For Animals v. Williams, 246 F.Supp.2d at 46, citing Sierra Club v. Watkins, 808 F. Supp. at 862 (noting that “disagreement [among experts] does not render the agency’s action arbitrary and capricious.”) Here, the agency action is the retention of eight (8) stranded, releasable California sea lions for public display. There is no serious scientific debate about the process and procedures that will be used to transport animals. IMMS will be using standard and accepted procedures. IMMS will not be experimenting with new transport processes or procedures. Furthermore, there is no scientific controversy about public display. Whatever controversy may exist regarding public display is philosophical and that fails to satisfy the legal standard for controversy under NEPA. Moreover, Congress has statutorily resolved this issue by specifically authorizing and approving the public display of marine mammals.
- 5) There are no uncertain, unique, or unknown risks from retaining eight (8) stranded, releasable California sea lions for public display. California sea lions have been maintained in an aquarium environment for many years and the proper procedures for doing so are well established. Such procedures will be employed by IMMS. Further, standard and accepted techniques will be used in the transport of the animals.
- 6) Approval of the permit application does not constitute a precedent for future actions with significant effects on the human environment, nor does it represent a decision in principle about a future issue. The type of “precedent” referred to in 40 C.F.R. § 1508.27(b)(6) is a situation where an action by an agency constitutes an irreversible precedent for a future action by that agency.

It is not that someone outside the agency may be more likely to ask the agency to act on a permit. Thus, the courts have held that for an action to establish a “precedent” it must “form a link in a change of bureaucratic commitment that will become progressively harder to undo the longer it continues.” The Fund for Animals v. Williams, 246 F.2d at 47, quoting Sierra Club v. Marsh, 769 F.2d 868, 879 (1st Cir. 1985). Indeed, absent proof that approval of this permit application will constitute a “binding precedent” with respect to future applications there is no “precedent” within the meaning of the applicable regulations. Town of Cave Creek v. Federal Aviation Administration, 325 F.3d 320, (D.C. Cir. 2003). Given that any future permit application to keep stranded, releasable and/or non-releasable sea lions is to be judged on its own “particular circumstances and problems,” no precedent arises. Id. at 332.

- 7) This request to keep eight (8) stranded, releasable California sea lions for public display is not part of any cumulatively significant impact. A cumulative impact is defined as that resulting from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. The proposed retention of 8 stranded, releasable California sea lions for public display is a single event unrelated to any other event and, therefore, there is no cumulative impact resulting from this act. Moreover, no one can allege a related chain of impacts as this act of keeping 8 stranded sea lions for public display will not result in the removal of any additional animals from the wild by IMMS.
- 8) There is no impact from this request to keep eight (8) stranded, releasable California sea lions for public display, on any protected scientific, cultural, or historic sites or resources.
- 9) California sea lions are not listed under the Endangered Species Act and, therefore, there is no impact on species protected under that statute.
- 10) The proposed activity will not violate any federal, state, or local law.

d) Impact on the Marine Ecosystem

For reasons stated in Section IV. F (b), “Impact on the Species or Stock”, there will be no impact on the marine environment from not releasing these stranded sea lions.

V. Export Requirements

This section is not applicable as there will be no exports of marine mammals associated with this permit application.

VI. General Requirements for Public Display

A. The Facility at Which the Marine Mammals Will be Maintained

The facility to house the stranded, releasable and/or non-releasable California sea lions will be:

The Institute for Marine Mammal Studies (IMMS)
Center for Marine Education and Research
10801 Dolphin Lane
Gulfport, Mississippi 39503

IMMS' Center for Marine Education and Research (CMER) is an USDA licensed and inspected exhibitor. The Center is open to the public, on a regularly scheduled basis from 9am to 4pm. The cost of admission is \$4 for adults and \$3 for children under 12 years of age. There are group discounts and prices are subject to change. Brochures are attached (see Appendix H).

The Institute for Marine Mammal Studies ("IMMS" or "the Institute"), located in Gulfport, Mississippi, is a non-profit organization established in 1984 for the purposes of public education, conservation, and research of marine mammals. The Institute's mission is to conduct and support research studies on marine mammals, rescue and rehabilitate stranded animals, and increase the awareness of students and the general public on marine conservation issues. Additional information about IMMS is available on our web site: www.imms.org.

IMMS has the expertise, qualifications and resources to respond to both live and dead marine mammal strandings in the northern, central Gulf of Mexico. The Institute has been a member of the National Stranding Network since its inception in 1984, and has been very active in responding to both types of strandings. The IMMS staff has many years of experience in marine mammal care, training, husbandry, research, stranding response and veterinary care. IMMS is the only marine mammal organization in the Mississippi-Louisiana-Alabama sub-region that has the capability, expertise and license to provide long-term care for sick and injured marine mammals. IMMS has also developed a comprehensive marine mammal research program over the years, which continues to expand. A list of IMMS staff and their qualifications is attached as Appendix I.

IMMS is an active member of the local community and conducts educational seminars for local schools and the general public about the environment and our impact on the marine ecosystem. We also participate in community events that support environmental awareness and conservation. IMMS has provided funding and facilities to graduate students in order for them to conduct their research and also developed a supervised marine mammal veterinary preceptorship program for final year veterinary students. We also keep our website (www.imms.org) updated with useful information on marine mammals that the public can access.

Please see photos of the Institute's facility, CMER, in Appendix J - Exhibits 1-6, which is attached.

The Institute's CMER is a campus comprised of four buildings (Exhibit 1), a Multimedia Center with a classroom and museum, an Animal Care building, a

Veterinary Hospital, and a Necropsy Laboratory. The Multimedia Center building (Exhibit 2) contains a 200-seat multi-function classroom with audio-visual equipment and an interactive museum where students and the general public can learn about marine mammals, marine conservation issues, and other marine animals. The Animal Care building (Exhibit 3) consists of a fish kitchen with a refrigerator and walk-in freezer, a meeting room, locker rooms and showers, a security tower (IMMS has 24-hour security on the premises), and pump and filter room. This building also has several pools associated with it, including two water mixing and treatment pools, two critical care animal isolation pools, and one large 650,000 gallon pool with medical pens and a slide-out area. These pools are located to the back (south) and west sides of the building.

A separate sea lion housing area (Exhibit 6) has been designed with 2 separate animal areas, each complete with a permanent pool, dry resting area, and 2 pen enclosures. Each pool, 20' diam x 6' deep, is on its own filter system with a turnover rate of 2 ½ hours, and is fully shaded. The water level in each pool can be raised and lowered according to the animal's abilities. Each pool is surrounded by 286 ft² of dry area. Additionally, each of these pool areas leads out into a second dry area with 2 smaller enclosure "pens" where animals may be separated if needed. Furthermore, this sea lion exhibit is dynamic in that pen doors may be opened and closed for socializing and isolation purposes. Having two separate housing areas for sea lions gives us the ability to quarantine animals as necessary. The rehab animals and the collection animals will not need to share the same living, exam, or vet space. We plan to quarantine the acquired rehab animals from the public display/collection animals by housing them in the two separate facilities that we have on property. These two sea lion areas are physically separated and have separate filtration systems.

Our contingency plans for natural disasters include crating the animals and transporting them in a covered truck to safety.

The Veterinary Hospital (Exhibit 4) is comprised of two separate areas: a small animal clinic and a large, marine mammal area. The small animal side has a reception area, an examination room, a large treatment room, a surgical suite (operating room), and a small animal ward. The marine mammal care area of the hospital contains a large treatment room, a surgical suite, a surgical recovery room, and an x-ray room. The two areas share a pharmacy and lab area as well as a surgical prep room. Each side also has a large office for the practicing veterinarian(s). Lastly, the Necropsy Laboratory (Exhibit 5) has a large dissection room, sinks, and both a walk-in freezer and refrigerator to store whole carcasses for necropsy examination when necessary. Overall, this facility will be an invaluable asset for the Mississippi Gulf Coast in many ways. It has already begun to serve as an educational venue for K-12 school field trips, where students, teachers, and parents can learn about pertinent marine conservation issues facing the world and the Gulf of Mexico today. CMER has also made its debut as a central meeting place along the north-central Gulf of Mexico where stranding network members can convene and discuss activities, issues, and research. The facility has already been utilized in response to numerous strandings

and as a teaching lab for veterinary students. As we move forward, CMER's research, education and conservation programs will continue to grow and exert an even greater impact on marine science in our state and region.

B. USDA Exhibitor's License

The Institute's USDA certificate number is 65-C-0540. Please see the attached copy of our USDA Exhibitor's License (Appendix K).

C. Education or Conservation Program

The Institute's educational programming is consistent with professional recognized standards of informal education in aquaria and zoos across America, including the AZA. The programming consists (but is not limited to) the following:

- Graphic Displays and interactive exhibits in the Museum
- Touch pool areas with aquaria exhibiting local marine animals in the Discovery Room
- Video Presentations and lectures in the 200-seat Multimedia Center
- Field trips and tours for local schools, community organizations and the general public
- Animal rescue response and protocol seminars
- Animal educational presentations
- Website downloads of games and activities and educational literature
- Outreach programs for schools, festivals, fairs, and community organizations
- Knowledge building hands-on activities offered through the Sea Explorer's Club educational program.
 - Animal Rescue
 - Treasures at Sea
 - Aquarium 101
 - Aquarium 102
 - Secrets of SCUBA
 - All About Fish
 - Careers with Fins and Flipper

As previously mentioned, the Institute also has a very robust conservation and research program and is a Stranding Agreement holder with NMFS, which includes response to dead and live marine animal strandings in the states of Mississippi, Alabama, and in certain areas of Southeast Louisiana. The Institute has been involved in stranding response since 1984. We collect information and tissues from stranded animals and perform complete necropsies when appropriate to carcass condition. Research on strandings and the wild dolphin population in the Mississippi

Sound is an integral part of the Institute's conservation mission. The Institute has developed and distributes informational brochures to the general public about the importance of strandings and how people can help in conserving and protecting the marine environment. As part of our efforts we provide graduate and veterinary students an opportunity to conduct their research and learn about various aspects of veterinary care and husbandry of marine mammals.

VII. Previous Permits

The Institute for Marine Mammal Studies has two other authorities under the MMPA including the following permits:

- 1) Stranding Agreement (formerly known as LOA) with NMFS OPR, MMHSRP, for live and dead dolphin stranding response and live animal rehabilitation. This permit expires on June 30, 2012.
 - 2) Level B Harassment Permit with NMFS for wild dolphin research (GA – LOC #13549). This permit expires on August 31, 2013.
- A. This is not applicable because no previous permits have been issued to the Institute for Marine Mammal Studies, and therefore there are no required reports due to date.
- B. This is not applicable because no cooperating institutions and individuals of the Institute for Marine Mammal Studies have previously held permits.
- C. No other permits or authorizations are being sought in connection with the requested permit.

VIII. Certification and Signature

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the following statute and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and regulations (50 CFR Part 216).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972."

Signature of Applicant

Date of Signature

Moby Solangi, Ph.D.

Typed or Printed Name of Applicant

President and CEO / Institute for Marine Mammal Studies

Title of Applicant

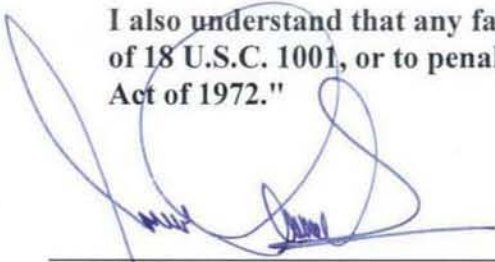
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Signature of Applicant

March 05, 2010

Date of Signature

Moby Solangi, Ph.D.

Typed or Printed Name of Applicant

President and CEO / Institute for Marine Mammal Studies

Title of Applicant

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